Supreme Court, U.S.
FILED
NOV 9 1994
OFFICE OF THE CLERK

No. 94 852

In the Supreme Court of the United States

OCTOBER TERM, 1994

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

GABRIEL J. BAPTISTE, JR.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

DREW S. DAYS, III
Solicitor General

LORETTA C. ARGRETT
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

KENT L. JONES
Assistant to the Solicitor General

DAVID I. PINCUS
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

85

QUESTION PRESENTED

Whether Section 6324(a)(2) of the Internal Revenue Code, 26 U.S.C. 6324(a)(2), which limits a transferee's personal liability for unpaid estate taxes to the value of the transferred property, precludes the accrual of interest on that personal liability.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statutes involved	2
Statement	3
Reasons for granting the petition	8
Conclusion	12
Appendix A	1a
Appendix B	12a
Appendix C	38a
Appendix D	50a

TABLE OF AUTHORITIES

Cases:

Commissioner v. *Stern*, 357 U.S. 39 (1958) 10
Estate of Stein v. *Commissioner*, 37 T.C. 945 (1962) 10
Manning v. *Seeley Tube & Box Co.*, 338 U.S. 561 (1950) 10
Poinier v. *Commissioner*, 858 F.2d 917 (1988), cert. denied, 490 U.S. 1019 (1989) 8, 9, 10, 11
Richard Baptiste v. *Commissioner*, No. 93-4829 (11th Cir. Aug. 29, 1994) 7, 9, 10

Statutes:

Internal Revenue Code (26 U.S.C.):
§ 2042(2) 4
§ 6324(a)(2) 2, 4, 5, 6, 7, 8, 9, 10

Statutes – Continued: Page

§ 6324(b) 8, 9, 10
§ 6601 ..... 2, 4, 5, 10
§ 6601(a) 5, 6, 7, 10
§ 6601(b)(4) 5
§ 6601(e)(1) 2-3, 8
§ 6901 ..... 3, 9, 10
§ 6901(a) 3, 7, 9

Miscellaneous:

5 B. Bittker & L. Lokken, *Federal Taxation of Income, Estates, And Gifts* (2d ed. 1993) 4

In the Supreme Court of the United States

OCTOBER TERM, 1994

No.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

GABRIEL J. BAPTISTE, JR.,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra,* 1a-11a) is reported at 29 F.3d 433. The opinion of the Tax Court concerning the award of interest (App., *infra,* 12a-37a) is reported at 100 T.C. 252. The opinion of the Tax Court concerning the underlying personal liability of the transferees (App., *infra,* 38a-49a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 12, 1994. On September 29, 1994, Justice Thomas extended the time for filing a petition for a writ of certiorari

to and including November 9, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

1. 26 U.S.C. 6324 provides, in relevant part:

> (a)(2) If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee * * * or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. * * *
>
> * * * * *
>
> (b) * * * If the [gift] tax [imposed by chapter 12] is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. * * *

2. 26 U.S.C. 6601 provides, in relevant part:

> (a) If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid.
>
> * * * * *
>
> (e)(1) Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be

deemed also to refer to interest imposed by this section on such tax.

3. 26 U.S.C. 6901 provides, in relevant part:

(a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

* * * * *

(1)(A) The liability, at law or in equity, of a transferee of property—

(i) of a taxpayer in the case of a tax imposed by subtitle A (relating to income taxes),

(ii) of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), or

(iii) of a donor in the case of a tax imposed by chapter 12 (relating to gift taxes),

in respect of the tax imposed by subtitle A or B.

STATEMENT

1. The father of respondent Gabriel Baptiste died in 1981. A few months later, respondent and his brother (Richard Baptiste) each received $50,000 as beneficiaries of their father's life insurance policy. App., *infra*, 40a, 51a.

The estate of respondent's father filed its estate tax return in 1982. In 1985, the Internal Revenue Service notified the estate of a deficiency in its estate tax. The estate challenged the deficiency in Tax Court. The Tax Court case was settled in 1988 under a stipulated decision that

determined an estate tax deficiency of approximately $62,000. The deficiency, and the interest accumulating on it under 26 U.S.C. 6601, have not been paid. App., *infra,* 40a-41a.

2. The life insurance proceeds received by respondent and his brother were part of their father's gross estate. 26 U.S.C. 2042(2). Under Section 6324(a)(2) of the Internal Revenue Code, if an estate tax is not paid when due, a "transferee" who receives such property of the gross estate, is "personally liable for such tax." 26 U.S.C. 6324(a)(2).[1] The personal liability of the transferee under Section 6324(a)(2), however, is limited to "the value, at the time of the decedent's death, of such property" (*ibid.*).

Under these provisions, respondent and his brother, who each received $50,000 in life insurance proceeds in 1981, were liable as "transferees" for the unpaid estate taxes owed by their father's estate. App., *infra,* 13a. Because the estate failed to pay these taxes, the Internal Revenue Service mailed notices of transferee liability to respondent and his brother in 1989, asserting a liability for

---

[1] 26 U.S.C. 6324 (a)(2) provides, in relevant part:

> If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, * * * or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

The types of property includable in the gross estate under Sections 2034 through 2042 are those, such as the life insurance proceeds received by respondent in this case, that pass directly to the beneficiary without going through the hands of the executor. Section 6324(a)(2) "reflects the fact that the executor does not control these nonprobate assets and hence cannot use them to pay the estate tax, even if the probate assets are insufficient." 5 B. Bittker & L. Lokken, *Federal Taxation of Income, Estates, And Gifts* ¶ 137.7.3 (2d ed. 1993).

each in the amount of $50,000 under 26 U.S.C. 6324(a)(2), plus interest on that amount under 26 U.S.C. 6601. App., *infra,* 13a.

3. Respondent and his brother disputed the amount of the underlying estate tax liability and challenged their transferee liability in Tax Court.

a. In 1992, the Tax Court concluded that respondent was barred from challenging the amount of the estate tax deficiency ($62,000) determined by the stipulated decision entered in the estate's Tax Court case. The court held that the earlier judgment was binding on respondent and other heirs under normal principles of res judicata. App., *infra,* 46a.

While the outstanding estate tax liability and interest then exceeded $100,000, the court noted that respondent's personal liability as "transferee" under Section 6324(a)(2) of the Code was limited to $50,000—the amount that he received from his father's life insurance (App., *infra,* 48a-49a). The court reserved for further proceedings the question whether interest would accrue on respondent's transferee liability of $50,000 (*id.* at 49a).

b. The Tax Court consolidated the separate cases filed by respondent and his brother to address the question of interest. In a reviewed decision (12-6, with 2 judges concurring specially), the Tax Court held that interest accrues on a transferee's personal liability under the general provisions of 26 U.S.C. 6601(a), which provides for the addition of interest to any unpaid tax obligation.[2] The court

---

[2] Under 26 U.S.C. 6601(a), interest is to be paid on any unpaid taxes for a period running from the last date prescribed for payment to the date the tax is actually paid. In the circumstances of this case, the last date prescribed for payment of the transferee liability was the date the liability in question arose. See 26 U.S.C. 6601(b)(4). That date is the latter of the date that the property was received by the transferee or the date that the estate return was filed. App., *infra,*

rejected the argument that Section 6324(a)(2) precluded the addition of interest to the $50,000 liability of respondent and his brother as transferees. The court concluded that the limitation on transferee liability in Section 6324(a)(2)—to the value of the property received by the transferee—did not preclude the ordinary addition of interest to that liability after it was so determined. App., *infra,* 14a-19a.[3]

Judge Halpern, concurring specially (with Judge Chiechi), concluded that transferee liability is not a "tax" liability, to which interest accrues as a matter of law under 26 U.S.C. 6601(a). Instead, Judge Halpern reasoned that the statutory liability of a transferee for taxes owed by the estate is a personal, non-tax liability. The provision for interest on unpaid "taxes" under 26 U.S.C. 6601(a) therefore

---

14a-15a. Since respondent received the proceeds in 1981, before the estate filed its return (in 1982), the court concluded that interest on his transferee liability (of $50,000) began to run on the latter date. *Id.* at 15a.

[3] Judge Ruwe wrote a concurring opinion in which he stated that he agreed with the majority that Section 6324(a)(2) serves only to ensure that the personal liability of the transferee—as of the time it arises—does not exceed the value of the transferred property; that Section does not speak to the question of the imposition of interest on that personal liability after it has arisen. App., *infra,* 20a-23a. Judge Ruwe further agreed that the question of interest is controlled by Section 6601(a). App., *infra,* 20a. He noted that the analysis followed by the court in this case conforms to the traditional approach to transferee liability under state law, which generally provides for the imposition of interest from the date on which the transferee received the transferred property. *Id.* at 21a-22a. Judge Ruwe observed that, if the Tax Court adopted the contention that Section 6324(a)(2) precludes the addition of interest to the transferee's liability during the period after the transferee receives property from the estate, "we would be radically changing the traditional concept of limited transferee liability without any indication that Congress intended that result" (App., *infra,* 22a).

does not apply directly to transferee liability. App., *infra,* 25a-26a. Judge Halpern then explained, however, that, under the special provisions Congress adopted for transferee liability under 26 U.S.C. 6901(a), "[t]he liability at law or in equity, of a transferee of property" for an unpaid estate tax is *treated* as if it were a tax liability and is made "subject to the same provisions" for assessment and collection as tax liabilities (*ibid.*), including the collection of interest under 26 U.S.C. 6601(a).[4] App., *infra,* 26a-33a.

The dissenting Tax Court judges concluded that the limitation on transferee liability in 26 U.S.C. 6324(a)(2) – to the value at the time of death of the transferred assets – precludes the addition of subsequent interest that would result in a greater total liability. App., *infra,* 35a. In their view, the liability of respondent and his brother should be limited to the $50,000 each received in 1981, and should not bear any interest. *Id.* at 34a-37a.

3. Respondent and his brother appealed to different circuits. In *Richard Baptiste* v. *Commissioner,* No. 93-4829 (11th Cir. Aug. 29, 1994), the Eleventh Circuit followed the analysis of Judge Halpern's concurring opinion in the Tax Court and affirmed. Pet. App. 50a-68a.

In the present case (*Gabriel Baptiste* v. *Commissioner*), the Eighth Circuit followed the reasoning of the dissenting opinion in the Tax Court and reversed the assessment of interest on respondent's transferee liability of $50,000.[5]

---

[4] 26 U.S.C. 6901(a) provides that the liability of a "transferee of property" for unpaid estate taxes is to "be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred * * *."

[5] The Eighth Circuit agreed with the Eleventh Circuit and the Tax Court, however, that the stipulated decision entered in the estate's Tax Court case barred relitigation by respondent and his brother of the underlying estate tax obligation. See Pet. App. 5a-8a, 59a-63a.

The court pointed out that Section 6601(e)(1) of the Code states that "any reference * * * to any tax * * * shall be deemed also to refer to interest imposed by this section on such tax." 26 U.S.C. 6601(e)(1). Relying on that provision, the court concluded that the limitation (to the value of the property received) on the personal liability of the transferee "for such tax" under Section 6324(a)(2) "clearly contemplates" that it "encompass[es] the transferee's liability for interest" (App., *infra,* 9a).

The Eighth Circuit also relied (App., *infra,* 10a-11a) on the Third Circuit's opinion in *Poinier* v. *Commissioner,* 858 F.2d 917 (1988). In *Poinier,* the court concluded that interest may not be added to transferee liability for a *gift* tax if doing so would result in an ultimate liability in excess of the value of the transferred property. Under 26 U.S.C. 6324(b), the transferee of a gift is liable for any unpaid gift tax of the donor, "to the extent of the value of such gift" (*ibid.*). The Third Circuit held in *Poinier* that the transferee of a gift was not liable for interest in excess of that limit, reasoning that the language of the statute reflected an intent by Congress "to limit the total liability of donees to the value of the gift received." 858 F.2d at 922.[6]

REASONS FOR GRANTING THE PETITION

The court of appeals incorrectly held that the limitation on the personal liability of a transferee for unpaid estate taxes under Section 6324(a)(2) of the Internal Revenue Code—to the value of the property transferred—precludes the award of interest on that liability. The court's holding is consistent with the Third Circuit's reasoning in *Poinier*

---

[6] The taxpayer in *Poinier* filed a petition for a writ of certiorari with respect to a different issue, on which the government had prevailed in the court of appeals. The Court denied that petition. 490 U.S. 1019 (1989).

v. *Commissioner,* 858 F.2d at 922, under the analogous gift tax provisions of Section 6324(b). But the holding of the Eighth Circuit in this case directly conflicts with the decision of the Eleventh Circuit in *Richard Baptiste* v. *Commissioner, supra,* which addressed the liability of respondent's brother with respect to an identical transfer from their father's estate. Unless this recurring conflict is resolved by this Court, transferees with personal liability for unpaid estate taxes under Section 6324(a)(2)—or for unpaid gift taxes under the analogous provisions of Section 6324(b)—will be treated differently based solely upon geographical happenstance.

1. The personal liability of a transferee for an estate tax—or of a donee for a gift tax—is limited to the value of the property received. 26 U.S.C. 6324(a)(2), (b). Following the Third Circuit's reasoning in *Poinier* v. *Commissioner,* 858 F.2d at 922, the Eighth Circuit concluded in this case that this statutory limitation on the personal liability of the transferee precludes the addition of any interest on that liability.

The court's reasoning, however, failed to take account of—or even to mention—the provisions of Section 6901 of the Code. That Section specifies that the personal liability of a transferee for an estate tax (and of a donee for a gift tax) is to be "assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred" (26 U.S.C. 6901(a)). Under this statute, once the personal liability of the transferee (or donee) is determined—as limited to the amount of property received under 26 U.S.C. 6324(a)(2) and (b)—*that* liability becomes "subject to" the collection provisions of the Code. In particular, it becomes "subject to" Section

6601 of the Code, which requires that interest "shall" be added to the liability until "the date paid" (26 U.S.C. 6601(a)).[7]

In *Richard Baptiste* v. *Commissioner,* the Eleventh Circuit correctly identified and applied this controlling statutory language in concluding that interest must be added to the transferee's liability. App., *infra,* 63a-67a. By contrast, in *Poinier* v. *Commissioner* and in the present case, the Third and Eighth Circuits failed even to address, much less to apply, the language of Section 6901. By failing to consider the plain effect of this applicable statutory language, the decisions in this case and in *Poinier* reached an incorrect result.[8]

2. In addition to being incorrect, the decision in this case has reached an illogical result that creates perverse incentives for protracted and wasteful litigation. Unless interest accrues on the personal liability of the transferee in

---

[7] 26 U.S.C. 6324(a)(2) and (b) establish a federal rule of personal liability for transferees with respect to the estate and gift tax. 26 U.S.C. 6901 provides for enforcement of those personal liabilities under the same provisions of the Code that apply to the collection of the underlying taxes themselves.

Unlike the case with gift and estate taxes, there is no substantive federal rule (similar to 26 U.S.C. 6324(a)(2) and (b)) establishing the personal liability of transferees for unpaid *income* taxes. See *Commissioner* v. *Stern,* 357 U.S. 39, 42-44 & n.3 (1958). In the absence of an applicable federal statute, the Court concluded in *Stern* that the substantive, personal liability of a transferee for *income* tax deficiencies is to "be determined by state law" rules concerning the recovery of transfers made "in fraud of creditors" (*id.* at 46). See also *Estate of Stein* v. *Commissioner,* 37 T.C. 945, 960-961 (1962).

[8] As this Court emphasized in *Manning* v. *Seeley Tube & Box Co.,* 338 U.S. 561, 566 (1950), "[i]n the absence of a clear legislative expression to the contrary, the question of who properly should possess the right of use of the money owed the Government for the period it is owed must be answered in favor of the Government."

the normal fashion, a person in respondent's position would have an obvious incentive to protract the final determination of his liability in order to obtain the benefit of the use of the property during the period of the litigation. As Judge Seitz noted in dissenting in part in *Poinier*, it is illogical and "inconceivable * * * that Congress intended that a donee taxpayer * * * was to be given a free ride until the government obtained satisfaction of the judgment" (858 F.2d at 923).

The incentive for protracted and wasteful litigation that this "free ride" creates is manifest; it may even be evidenced in the history of this particular case.[9] Respondent's principal substantive objection to imposition of the liability was that the doctrine of *res judicata* did not bind him to the Tax Court's prior determination of the amount of the estate tax liability. While that objection was treated with appropriate dignity, it was readily rejected under well-established authority by each of the courts below (App., *infra*, 5a-8a, 46a, 59a-63a). Since the funds at issue in this case were transferred to respondent in 1981 (*id.* at 40a), if interest does not accrue on his liability as transferee, respondent stands to profit from any obstacle that has delayed the final determination of his liability and the "satisfaction of that judgment" (*Poinier* v. *Commissioner*, 858 F.2d at 923 (Seitz, J., dissenting in part). Under the analysis applied by the court of appeals in this case, every transferee would have a similar incentive to engage in protracted, and even wasteful, litigation. See note 9, *supra*.

---

[9] We do not mean to accuse respondent of having engaged in wasteful and protracted litigation in this case. We only mean to point out that the *incentives* for delay under the decision below would operate to justify, from a purely economic perspective, advancing a difficult litigation position in a situation where such a position might otherwise not be pursued.

3. The question presented in this case recurs in every gift and estate tax case in which a transferee receives property that is worth less than the amount of the outstanding tax. Absent a decision by this Court resolving the conflict among the courts of appeals, the treatment of such transferees under the Internal Revenue Code will differ based solely upon the circuit in which the transferee happens to reside.

Resolution of this recurring issue by this Court is needed to avoid continuing uncertainty and ensure evenhanded application of the revenue laws. The importance of preserving an evenhanded application of the Internal Revenue Code is drawn with particular clarity in this case, for the liabilities of two brothers with respect to identical dispositions of the same estate have been treated inconsistently in the decisions below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

LORETTA C. ARGRETT
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor

KENT L. JONES
Assistant to the Solicitor General

DAVID I. PINCUS
Attorney

NOVEMBER 1994

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 93-2960

GABRIEL J. BAPTISTE, JR., TRANSFEREE, APPELLANT,

v.

COMMISSIONER OF INTERNAL REVENUE, APPELLEE.

Appeal from the United States Tax Court

Submitted: March 14, 1994

Filed: July 12, 1994

Before McMILLIAN, WOLLMAN and BEAM, Circuit Judges.

McMILLIAN, Circuit Judge.

Gabriel J. Baptiste, Jr. (Gabriel) appeals the United States Tax Court's determination that (1) the decision in the *Estate of Baptiste v. Comm'r,* No. 44928-85 (T.C. May 13, 1988) (*Estate of Baptiste*), was res judicata as to the existence and amount of estate tax imposed on the transfer of Gabriel J. Baptiste, Sr.'s Estate for purposes of determining Gabriel's transferee liability pursuant to 26 U.S.C. § 6324(a), and (2) he was liable for interest on the amount

of his personal liability for unpaid estate tax, beyond the value of the property transferred, accrued since the due date of the estate tax return. For the reasons discussed below, we affirm in part and reverse in part the judgment of the tax court.

I. BACKGROUND

In September 1981 Gabriel J. Baptiste, Sr. (decedent) died. Shortly after decedent's death, Gabriel, one of decedent's three children, received $50,000 as a beneficiary of decedent's life insurance policy. In December 1982 the Estate of Gabriel J. Baptiste, Sr., Barbara Baptiste, Statutory Executrix (transferor), filed a federal estate tax return.

The Commissioner of Internal Revenue (Commissioner) determined that there was a deficiency in estate tax and, on September 18, 1985, the Commissioner mailed a notice of deficiency to the transferor. The transferor timely filed a petition in the tax court contesting the deficiency. The Commissioner and the transferor agreed that $62,378.48 of estate tax was owed to the government and, in accordance with that agreement, the tax court, in *Estate of Baptiste*, entered a stipulated decision that a deficiency in the amount of $62,378.48 in estate tax was due from the transferor. However, the transferor never paid the tax.

Pursuant to 26 U.S.C. § 6324(a)(2) of the Internal Revenue Code,[1] if an estate tax is not paid when due, then

---

[1] 26 U.S.C. § 6324(a)(2) states, in pertinent part:

> If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee . . . or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

certain beneficiaries of the estate are personally liable for the tax to the extent of the value, at the time of the decedent's death, of any property they received from the estate. Consequently, the Commissioner mailed a notice of transferee liability to Gabriel asserting liability against him for estate tax in the amount of $50,000, plus interest, as an insurance beneficiary, and, thus, a transferee of property of the transferor under § 6324(a)(2).[2]

Gabriel did not contest the determination that he was personally liable as a transferee under § 6324(a)(2). Instead, he filed a *pro se* petition contesting the *amount* of the underlying estate tax liability. The Commissioner filed an answer which admitted and denied certain allegations. In addition, the Commissioner set forth affirmative allegations that Gabriel was liable under § 6324(a)(2) as a transferee at law for the deficiency in estate tax due from the estate.

Gabriel failed to respond to the Commissioner's affirmative allegations and the matter of Gabriel's transferee liability was deemed admitted under Tax Ct. R. 37(c).[3] The Commissioner filed a motion for summary judgment, relying upon the pleadings, affirmative allegations contained in the answers that were deemed admitted, and the

---

[2] Section 6324(a)(2) imposes transferee personal liability on beneficiaries of property included in a decedent's gross estate under 26 U.S.C. § 2042. Pursuant to § 2042(2), life insurance proceeds are includable in a decedent's gross estate for estate tax purposes.

[3] Tax Ct. R 37(c) provides:

> Effect of reply or failure thereof. Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, filed a motion that specified allegations in the answer be deemed admitted.

decision of the tax court in *Estate of Baptiste*. The Commissioner asserted that the stipulated decision establishing $62,378.48 as the amount of estate tax was res judicata with respect to the estate tax liability to the transferor, and that Gabriel, as a transferee at law under § 6324(a)(2), was liable for $50,000, plus interest, of the unpaid estate tax of the transferor. At that time, Gabriel obtained counsel.

The tax court granted partial summary judgment in favor of the Commissioner on April 1, 1992. The tax court determined that its decision in *Estate of Baptiste* was res judicata as to the existence and amount of estate tax due from the estate of the decedent. The tax court then determined that Gabriel was personally liable under 26 U.S.C. § 6324(a)(2) for the unpaid taxes to the extent of the value, at the time of decedent's death, of his interest in the insurance benefits. At the time of decedent's death, the value of the proceeds of insurance of decedent's life payable to him was $50,000. The tax court reserved judgment as to the extent of Gabriel's liability for accrued interest on the amount of his personal liability for unpaid estate tax and denied that portion of the Commissioner's summary judgment motion without prejudice. On March 29, 1993, the tax court entered an order finding Gabriel liable for accrued interest on the amount of his personal liability for unpaid estate tax from the due date of the decedent's estate tax return. Gabriel appealed.

II. DISCUSSION

Gabriel argues on appeal that (1) the decision in *Estate of Baptiste* is not res judicata as to the existence and amount of estate tax imposed on the transfer of decedent's estate for purposes of determining his transferee liability pursuant to 26 U.S.C. § 6324(a), and (2) he is not personally liable for interest, beyond the value of the property

transferred, accrued since the due date of the decedent's estate tax return.

The court of appeals has exclusive jurisdiction to review the decisions of the tax court "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury." 26 U.S.C. § 7482(a). Because the questions in this case are purely legal, we review them de novo. *Estate of Robertson v. Comm'r,* 15 F.3d 779, 781 (8th Cir. 1994).

Res Judicata

When a person dies and estate tax is not paid by the estate, a lien attaches to the decedent's gross estate. 26 U.S.C. § 6324(a)(1). To the extent the estate tax remains unpaid, the recipient of property included in the decedent's gross estate becomes personally liable for the tax, up to the value of the property received. 26 U.S.C. § 6324(a)(2). Gabriel first argues that the decision entered by the tax court in *Estate of Baptiste* pursuant to a stipulated agreement, regarding the deficiency in estate tax, carried no res judicata effect for purposes of imposing personal, transferree liability on him under § 6324(a)(2). We disagree.

Res judicata promotes judicial economy by preventing repetitious suits involving the same cause of action. The general rule of res judicata provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties and their privies are thereafter bound not only as to every matter presented to the court but also as to every matter that might have been brought before the court. *Headley v. Bacon,* 828 F.2d 1272, 1274 (8th Cir, 1987). It is well established that the doctrine of res judicata applies to the field of federal taxation. *United States v. International Bldg. Co.,* 345 U.S. 502 (1953).

The doctrine of res judicata is applicable when an identical issue is contested in a separate proceeding arising out of a single cause of action. *Krueger v. Comm'r,* 48 T.C. 824, 828 (1967) (*Krueger*). In the present case, the requirement that the claims raised in the subsequent litigation be in substance the same as those in the prior litigation has been satisfied. The cause of action giving rise to the present case is the transferor and Gabriel's respective obligation to pay the estate tax imposed on the transfer of decedent's estate. In *Estate of Baptiste*, the tax court determined that $62,378.48 was the amount of estate tax due on the transfer of decedent's estate pursuant to chapter 11 of the Internal revenue Code. Pursuant to 26 U.S.C. § 2001, a tax is imposed on the transfer of the taxable estate of every decedent who was a citizen or resident of the United States at the time of his or her death. Under 26 U.S.C. § 2002, the estate tax is payable by the executor of the estate. The estate tax is due at the time fixed for filing the estate tax return. Pursuant to 26 U.S.C. § 6324(a)(2), if the estate tax is not paid when due, then certain beneficiaries, or transferees, of the estate are personally liable for the tax to the extent of the value, at the time of the decedent's death, of any property received from the estate. Thus, the amount of the executor's liability under § 2002, and the amount of a transferee's liability under § 6324(a)(2), are both determined by the amount of estate tax imposed by § 2001. The decision in *Estate of Baptiste* determined the amount of liability for estate tax. Consequently, the issue decided in *Estate of Baptiste* and the issue of transferee liability are identical for purposes of applying the res judicata doctrine.

The requirement under the res judicata doctrine that the parties in the subsequent action are the same as, or in privity with, those in the earlier litigation has also been satisfied in the present case. It is well settled that a

transferor, such as the estate in the present case, and a transferee, such as Gabriel, are in privity for purposes of determining the amount of tax imposed on the transfer of decedent's estate. *See Krueger*, 48 T.C. at 829; *Estate of Egan v. Comm'r*, 28 T.C. 998, 999 (1957), *aff'd*, 260 F.2d 779 (8th Cir. 1958).

Further, the stipulated decision against decedent's estate, which was entered as a result of an agreement between the Commissioner and the transferor, was a final decision on the merits for purposes of res judicata. *See Forehand v. Comm'r*, 66 T.C.M. (CCH) 1763 (1993) (decision entered pursuant to stipulated agreement between estate and commissioner is binding, and a transferee of such an estate may not have estate's tax liability reconsidered on the merits); *see also Krueger*, 48 T.C. at 829-30.

Gabriel argues that, even if the res judicata doctrine is applicable, principles of public policy and fundamental fairness preclude its application in the present case. Gabriel contends that a "grave injustice" will occur in the present case if res judicata is applied because the decedent's second wife controls the bulk of decedent's assets located in Venezuela and has ignored her federal tax obligation. Gabriel argues that it is a grave injustice to require a United States citizen and minor beneficiary to pay the estate taxes when the nonresident alien and principal beneficiary "gets off scott-free." Gabriel also argues that, had he been able to defend the *Estate of Baptiste* case, the determination of estate tax liability would have been different.

In *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398-401 (1981), the United States Supreme Court held that the doctrine of res judicata is not subject to a "public policy" or "simple justice" exception, but rather, that public policy dictates preservation of final decisions. In any event, a careful review of the record

reveals that the tax court provided the estate with ample opportunity to reduce the estate tax and thereby limit the amount of transferee liability. The record also reflects that Gabriel was aware from the outset of his potential liability as a transferee. No "grave injustice" has occurred.

We therefore hold that the tax court's decision in *Estate of Baptiste* was res judicata for purposes of determining Gabriel's § 6324(a)(2) transferee liability.

Liability For Interest

Gabriel next argues that, even if he is liable as a § 6324(a)(2) transferee for unpaid estate taxes, the amount of his liability should be limited to the actual value of the interest transferred ($50,000), and that the tax court erred in holding him liable for accrued interest. We agree.

Section 6324(a)(2) both creates and limits the liability of a transferee. First, § 6324(a)(2) creates transferee liability. Pursuant to § 6324(a)(2), if an estate tax is not paid when due, the transferee who receives property included in the decedent's gross estate is personally liable for the estate tax. The transferee's personal liability for the transferor's tax includes interest. *See* 26 U.S.C. § 6601(e)(1) (providing that Internal Revenue Code's reference to "tax" shall also refer to interest imposed on that tax). That liability for interest runs from the due date of the estate tax return until the date the tax is paid. 26 U.S.C. § 6601(a), (b)(4)[4].

---

[4] Pursuant to §6601(a), interest shall be paid on any unpaid amount of tax for the period from the last date prescribed for payment to the date the tax is paid. Pursuant to § 6601(b)(4), where the last date for payment of a tax is not otherwise prescribed, then the last date for payment shall be deemed to be the date on which the liability arose. Section 6324(a)(2) provides that transferee liability arises on the later of the due date of the decedent's estate tax return, or the date property included in the decedent's gross estate is received by the transferee. Gabriel received the $50,000 proceeds of insurance on the decedent's

Section 6324(a)(2) also limits that liability. Pursuant to § 6324(a)(2), a transferee's personal liability is limited "to the extent of the value at the time of decedent's death" of the property actually transferred. As discussed earlier, § 6601(e)(1) provides that "any reference . . . to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax." Tax liability includes liability for interest, and, thus, § 6324(a)(2) clearly contemplates that the limitations imposed upon a transferee's tax liability also encompass the transferee's liability for interest.

The Commissioner recognizes that § 6324(a)(2) both creates and limits a transferee's personal tax liability. However, the Commissioner argues that the tax court correctly determined that § 6324(a)(2) imposes two separate laibilities. The Commissioner contends that the limitation of tax liability imposed by § 6324(a)(2) applies only to a transferee's personal liability for unpaid estate tax and for interest accrued thereon owed by a transferor; it does not, however, apply to a transferee's liability for interest accrued on unpaid estate tax owed by the transferee. In other words, the Commissioner argues that once a transferee becomes personally liable for unpaid estate tax pursuant to § 6324(a)(2), that transferee liability becomes a direct obligation of the transferee and should itself be treated as an independent tax subject to the accrual of interest under § 6601(a),[5] and not subject to the §6324(a)(2) limitation on liability. We disagree.

---

life prior to the due date of the transferor's estate tax return. Therefore, pursuant to § 6324(a)(4), Gabriel's transferee personal liability for unpaid estate tax arose on the due date of decedent's estate tax return.

[5] Section 6601(a) provides that interest shall be paid on any unpaid amount of tax.

This court finds persuasive the reasoning of the Third Circuit in *Poinier v. Comm'r,* 858 F.2d 917 (3d Cir. 1988) (*Poinier*), *cert. denied,* 490 U.S. 1019 (1989), which interpreted 26 U.S.C. § 6324(b), the gift tax counterpart to the estate tax provision of § 6324(a)(2). Section 6324(b) provides that, if a gift tax is not paid when due, the donee transferee of the gift shall be personally liable for the gift tax "to the extent of the value of such gift." In *Poinier*, the tax court had determined that donee transferees of a gift were liable for unpaid gift tax, and that they were also liable for accrued interest, beyond the value of the gift transferred. As in the present case, the Commissioner in *Poinier* argued that two separate liabilities existed under §6324(b). The Commissioner argued that the limitation of a donee's gift tax liability did not apply to the independent liability for interest, placed directly on the donee transferee, which arose at the time of service of the notice of transferee liability. The Third Circuit responded: "[t]his is not an easy argument to articulate, for unlike the donee liability provision in § 6324(b), the Commissioner can point to no specific code provision imposing such an independent liability on a transferee." 858 F.2d at 920. In rejecting the Commissioner's construction of the Internal Revenue Code, the Third Circuit emphasized that it is "both consistent with [its] plain language . . . and sensible" to give the limitation on the transferee's liability as broad a scope as the liability itself. *Id. Poinier* focused on the interplay between § 6601(f)(1) and § 6324(b). Section 6601(f)(1) (now § 6601(e)(1) at issue in the present case) provided that "any reference in the title . . . to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax." *Poiner* reasoned that § 6601(f)(1), when read into the limitation in § 6324(b) that a donee is personally liable for gift "tax" to the extent of the value of the gift, mandated the result

that a donee's transferee liability for accrued interest be limited to "the value of such gift." 858 F.2d at 920.

We believe §6324(a)(2) does not provide for two estate tax liabilities, one owed by the estate and another owed by the transferee, and such a reading by the Commissioner reflects an artificial construction of the Internal Revenue Code. The Commissioner's construction of § 6324(a)(2) ignores the fact that § 6324(a)(2) juxtaposes a transferee's personal liability with the limitation on transferee liability. Moreover, the Commissioner's construction ignores the critical interplay between § 6324(a)(2) and § 6601(e)(1).

Accordingly, we affirm that part of the judgment of the tax court holding that the decision in *Estate of Baptiste* is res judicata for purposes of imposing transferee liability upon Gabriel to the extent of the value of the interest transferred ($50,000), and reverse that part of the judgment of the tax court imposing liability for interest on the amount of Gabriel's personal liability for unpaid estate tax, beyond the value of the property transferred, accrued since the due date of decedent's estate tax return.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

100 T.C. No. 16

UNITED STATES TAX COURT

GABRIEL J. BAPTISTE, JR., TRANSFEREE, PETITIONER *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

RICHARD M. BAPTISTE, TRANSFEREE, PETITIONER *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 383-90, 384-90.[1]
Filed: March 29, 1993.

WHITAKER, *Judge*: This matter is before the Court on Respondent's separate motions for summary judgment filed pursuant to Rule 121.[2] The issue for decision is whether petitioners are liable for interest under Federal law on the amount of their personal liabilities for unpaid estate tax from the due date of the transferor's estate tax return.

FINDINGS OF FACT

On September 26, 1981, Gabriel J. Baptiste (hereinafter the decedent) died possessing incidents of ownership with

---

[1] These cases were consolidated for purposes of briefing and opinion pursuant to a joint motion filed by the parties.

[2] Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code as amended.

respect to certain insurance policies on his life. On or about November 16, 1981, Gabriel J. Baptiste, Jr. and Richard M. Baptiste received $50,000 apiece as beneficiaries of the insurance on decedent's life. On December 29, 1982, the Estate of Gabriel J. Baptiste, Barbara Baptiste, Statutory Executrix (hereinafter the transferor), filed a Federal Estate Tax return.

On September 18, 1985, respondent mailed a notice of deficiency to the transferor determining a deficiency in estate tax. On December 16, 1985, the transferor timely filed a petition with this Court contesting the notice of deficiency issued with respect to decedent's estate. On May 13, 1988, this Court entered a stipulated decision in *Estate of Baptiste v. Commissioner,* docket No. 44928-85, showing a deficiency in estate tax due from the transferor in the amount of $62,378.48. As of October 6, 1989, the estate tax liability of the transferor, plus interest thereon as provided by law, remained unpaid.

On October 6, 1989, respondent mailed separate notices of transferee liability to Gabriel J. Baptiste, Jr. and to Richard M. Baptiste asserting a liability against each petitioner for estate tax in the amount of $50,000, plus interest as provided by law, as an insurance beneficiary and transferee of property of the transferor. On January 2, 1990, petitioners filed separate petitions contesting the asserted liability.[3] Respondent subsequently filed motions for summary judgment requesting an adjudication in respondent's favor on all legal issues in controversy. On April 1, 1992, this Court filed separate opinions wherein it was determined that each petitioner was personally liable for unpaid estate tax to the extent of the value, at the time

[3] As of the date petitioners' respective petitions were filed with the Court, Gabriel J. Baptiste, Jr.'s legal residence was in Lincoln, Nebraska, and Richard M. Baptiste's legal residence was in Fort Pierce, Florida.

of decedent's death, of each petitioner's interest in the proceeds of insurance on decedent's life.[4] We reserved judgment, however, as to the existence and extent of petitioners' respective liabilities for interst under both State and Federal law for the periods before and after respondent's issuance of the statutory notices of transferee liability.[5]

OPINION

In our prior opinions we determined that each petitioner was personally liable for unpaid estate tax to the extent of $50,000—the value, at the time of decedent's death, of each petitioner's interest in the proceeds of insurance on decedent's life. The issue for decision herein is whether petitioners are liable for interest under Federal law on the amount of their personal liabilities for unpaid estate tax from the due date of the transferor's estate tax return.

Respondent contends that, in accordance with section 6601(a) and section 6601(b)(4), petitioners are liable for interest from the due date of the transferor's estate tax return.[6] Pursuant to section 6601(a), interest shall be paid on any unpaid amount of tax for the period from the last date prescribed for payment to the date paid. Pursuant to section 6601(b)(4), where the last date for payment of a tax is not otherwise prescribed, then the last date for payment

---

[4] At the time of decedent's death, the value of the proceeds of insurance on decedent's life payable to each petitioner was $50,000.

[5] See *Richard M. Baptiste, Transferee v. Commissioner,* T.C. Memo. 1992-198; *Gabriel J. Baptiste, Jr., Transferee v. Commissioner,* T.C. Memo. 1992-199.

[6] Respondent contends that each petitioner is liable for interest on his personal liability for unpaid estate tax in the amount of $50,000, not that each petitioner is liable for interest owed by the transferor on its unpaid estate tax in the amount of $62,378.48.

shall be deemed to be the date on which the liability arose.[7] Petitioners received the proceeds of insurance on decedent's life prior to the due date of the transferor's estate tax return. Therefore, pursuant to section 6324(a)(2), petitioners' personal liabilities for unpaid estate tax arose on the due date of the transferor's estate tax return.[8]

Petitioners contend that, in accordance with section 6324(a)(2) and section 6601(e)(1), their personal liabilities for unpaid estate tax and for interest accrued thereon are limited to $50,000 apiece. Pursuant to section 6324(a)(2), if an estate tax is not paid when due, then certain beneficiaries of the estate are personally liable for the unpaid estate tax to the extent of the value, at the time of the decedent's death, of any property received from the estate. Pursuant to section 6601(e)(1), any reference in the Code (except subchapter B of chapter 63) to any tax shall be deemed also to refer to interest imposed on such tax. Thus, petitioners assert that section 6324(a)(2) limits their personal liabilities for unpaid estate tax to $50,000, respectively, and that section 6601(e)(1) subjects interest im-

---

[7] Pursuant to sec. 6601(b), the last date prescribed for payment of a tax shall be determined under chapter 62 with the application of rules set forth in sec. 6601(b)(1) through (4). The provisions of chapter 62 do not specify the last date for payment of a transferee's personal liability for unpaid estate tax. Therefore, on the facts before us, the last date prescribed for payment is determined in accordance with sec. 6601(b)(4).

[8] Sec. 6324(a)(2) imposes a personal liability for unpaid estate tax on a transferee who "receives" property included in the decedent's gross estate under secs. 2034 through 2042. Consequently, a transferee's personal liability arises on the later of the due date of the transferor's estate tax return, or the date property included in the decedent's gross estate is received by the transferee.

posed on their personal liabilities for unpaid estate tax to the same limitation.

We agree with respondent's contention that petitioners are liable for interest from the due date of the transferor's estate tax return.[9] Furthermore, we disagree with petitioners' contention that their personal liabilities for unpaid estate tax and for interest accrued thereon are limited to $50,000 apiece. The limitation imposed by section 6324(a)(2) applies to a transferee's liability for unpaid estate tax and for interest accrued thereon owed by a transferor; it does not apply to a transferee's liability for interest accrued on unpaid estate tax owed by the transferee. Section 6324(a)(2) imposes a direct, personal, and primary obligation on a transferee. *Schuster v. Commissioner,* 312 F.2d 311, 315 (9th Cir. 1962), affg. 32 T.C. 998, 1006 (1959); *Estate of Whittle v. Commissioner,* 97 T.C. 362, 367 (1991); *Groetzinger v. Commissioner,* 69 T.C. 309, 316 (1977). Thus, interest accrues on a transferee's personal liability for unpaid estate tax notwithstanding the limitation imposed by section 6324(a)(2) on a transferee's liability for amounts owed by a transferor.

Petitioners cite *Poinier v. Commissioner,* 858 F.2d 917 (3d Cir. 1988), revg. in part 86 T.C. 478 (1986), as

---

[9] In *Estate of Stein v. Commissioner,* 37 T.C. 945, 959 (1962), we stated that sec. 6601 imposes interest on a transferee subsequent to the issuance of a notice of deficiency. See *Patterson v. Sims,* 281 F.2d 577, 580 (5th Cir. 1960). In *Estate of Stein,* petitioner's liability for the amount of unpaid tax and the date petitioner's liability arose were determined in accordance with State law. In the matter before us, by contrast, petitioners' respective liabilities for unpaid estate tax and the date petitioners' liabilities arose were determined in accordance with sec. 6324(a)(2). For purposes of sec. 6601(a), the date a transferee's liability for tax arises and the date interest commences to accrue depend upon the State or Federal law creating the liability.

authority for the proposition that section 6601(a) does not impose interest on a donee's personal liability for unpaid gift tax. In *Poinier,* the remainderman of a testamentary trust executed a disclaimer renouncing her interest in the trust. The resulting transfer of the trust's assets was held to be taxable under the Federal gift tax provisions, and donees of the assets were held to be liable for unpaid gift tax to the extent of the value of such assets. Reversing a decision of this Court, the Third Circuit held that the donees were not liable for interest on the amount of their personal liabilities for unpaid gift tax subsequent to the issuance of the notice of transferee liability.[10]

The issue presented for decision herein is whether petitioners are liable for interest subsequent to the due date of the transferor's estate tax return, not whether they are liable for interest subsequent to the issuance of the notice of transferee liability. In *Poiner v. Commissioner, supra,* the Third Circuit found no "explicit statutory authority" for imposing interest on a donee subsequent to the issuance of the notice of transferee liability. As set forth above, we have determined that (1) pursuant to section 6601(a), interest shall be paid from the last date prescribed for payment; (2) pursuant to section 6601(b)(4), the last date prescribed for payment is deemed to be the date on which the liability arose; and (3) pursuant to section 6324(a)(2), petitioners' personal liabilities arose on the due date of the transferor's estate tax return. Consequently, explicitly statutory authority does exist for imposing interest on a transferee subsequent to the due date of the transferor's estate tax return.

---

[10] The decisions herein are appealable to the Court of Appeals for the Eighth Circuit (docket No. 383-90) and the Court of Appeals for the Eleventh Circuit (docket No. 384-90), respectively.

Additionally, the facts and law before the Third Circuit in *Poinier v. Commissioner, supra,* presented a concern not extant in this case. In *Poinier,* the amount transferred to each donee ($5,225,311.71) exceeded the transferor's unpaid gift tax liability ($4,881,386.52) by $343,925.19; consequently, pursuant to section 6324(b) and the predecessor to section 6601(e)(1), each donee was personally liable for the transferor's unpaid gift tax liability of $4,881,386.52, plus interest accrued thereon and owed by the transferor of $343,925.19. Pursuant to section 6601(f)(2) as then in effect, however, no interest was payable on interest imposed by section 6601. Thus, the Third Circuit concluded that to impose interest on the transferee's liability of $5,225,322.71 would violate section 6601(f)(2)'s prohibition against the imposition of interest on interest.

On the facts before us, the amount transferred to each petitioner ($50,000) was less than the transferor's unpaid estate tax liability ($62,378.48); consequently, pursuant to section 6324(a)(2) and section 6601(e)(1), each petitioner is personally liable for the transferor's unpaid estate tax liability to the extent of $50,000, but neither petitioner is personally liable for interest accrued thereon and owed by the transferor. Additionally, section 6601(f)(2)'s prohibition against the imposition of interest on interest was repealed as of December 31, 1982. Thus, the compounding of interest which concerned the Court of Appeals for the Third Circuit in *Poinier v. Commissioner, supra,* is irrelevant in the instant case.

Notwithstanding the foregoing distinctions between the issue, facts, and law under consideration in *Poinier v. Commissioner, supra,* and those presently before the Court, we emphasize that our decision herein is consistent with our decision in *Poinier* and with the rationale set forth therein. In each instance, the Government was

denied the use of money due it; consequently, section 6601(a) imposed a liability for interest upon the transferee. That was, and remains, this Court's position with respect to the imposition of interest under Federal law on a transferee's liability for unpaid tax.

In accordance with our opinion herein, we hold that each petitioner is liable for interest under Federal law on the amount of his personal liability for unpaid estate tax from the due date of the transferor's estate tax return, and that the limitation imposed by section 6324(a)(2) does not apply to petitioners' respective liabilities for such interest.

Appropriate orders and decisions will be entered for respondent.

Reviewed by the Court.

CHABOT, PARKER, SHIELDS, COHEN, SWIFT, JACOBS, GERBER, WRIGHT, PARR, RUWE, and LARO, *JJ.*, agree with the majority opinion.

RUWE, *J.*, concurring: I agree with the majority's analysis of the interplay between personal liability under section 6324(a)(2) and interest on such liability pursuant to section 6601. I think it appropriate, however, to add a few words about the liability limitation provision contained in section 6324(a)(2).

Personal liability under section 6324(a)(2) does not arise until the following two conditions are met: (1) There must be an estate tax liability due and unpaid, and (2) property included in the gross estate must have been received by a transferee or other person designated by section 6324(a)(2). Thus, it is possible that personal liability under section 6324(a)(2) may arise at the time when the estate tax becomes due and remains unpaid, as in this case, or it may arise later, if a transfer occurs after the date that the estate tax becomes due and remains unpaid.

The provision in section 6324(a)(2) that limits personal liability to the date-of-death value of the property received is pertinent only when the estate tax, plus interest thereon, exceeds the date-of-death value of such property. Thus, whatever the date on which liability arises under section 6324(a)(2), the liability, at that point, cannot exceed the date-of-death value of the property received. On the other hand, at the time that personal liability comes into being, and the transferee[1] becomes personally liable to pay a limited amount of the estate tax liability, that limited amount of liability becomes a direct obligation of the transferee, which itself is treated as a tax under title 26. If it is not paid when due, section 6601 provides for interest on the unpaid amount. In this sense, it is interest on the transferee's personal liability, rather than interest on the estate's tax liability.

---

[1] Any person who is personally liable under sec. 6324(a)(2) is a transferee for purposes of the assessment and collection provisions of sec. 6901. Sec. 6901(h).

The aforementioned approach, which is based on a literal application of the statutory provisions, is identical to the traditional approach to transferee liability under State law where the transferred assets had a value less than the transferor's liability. In such cases, the transferee's liability has traditionally been limited to the value of the assets received by the transferee. Despite that initial limitation, a transferee also has been traditionally liable, in his or her own right, for interest on the value of the transferred assets from the date of receipt to the date of payment. See *Lowy v. Commissioner,* 35 T.C. 393, 395, 396 (1960); 14 Mertens, Law of Federal Income Taxation, sec. 53.39, at 102 (1974 rev.).[2]

There is nothing to indicate that the liability created by Congress in section 6324(a)(2) was intended to be a radical departure from traditional concepts of transferee liability. The only difference between traditional transferee liability under State law and that provided by section 6324(a)(2) is that section 6324(a)(2) limits liability to the value of transferred property at the date of death, whereas liability under traditional State law concepts would have been fixed by the value of property on the date received by the transferee. Under State law, the valuation date could have preceded the date of death (transfers in comtemplation of death), occurred on the date of death as in the instant case, or occurred after date of death. The limitation in section 6324(a)(2) fixed the date-of-death value as the single focus for the liability limit.

---

[2] The date on which interest begins to run against the transferee sometimes varies under State law. Thus, in some situations where there was no culpability on the part of the transferee, interest may not begin to run until notice and demand has been given to the transferee. See Saltzman, IRS Practice and Procedure, par. 17.06[1], at 17-29 (2d ed. 1991).

Were we to adopt petitioners' view of the liability limitation contained in section 6324(a)(2), we would be radically changing the traditional concept of limited transferee liability without any indication that Congress intended that result.[3] We would also be creating a system that would reward those who delay in paying their obligations. Petitioners' liability arose in 1981, almost 12 years ago, during which period they each have had the use and enjoyment of $50,000. This may continue through post-decision appeals and other delays in the collection process. It is unlikely that Congress contemplated that such use and enjoyment could continue free of interest charges.

In *Poinier v. Commissioner,* 86 T.C. 478 (1986), affd. in part and revd. in part 858 F.2d 917 (3d Cir. 1988), we held that a donee had limited personal liability for the donor's gift tax under section 6324(b) and was liable for interest from the date that the Commissioner served the donee with notice of the liability. (In *Poinier,* respondent claimed interest only from the date of the notice and our holding was therefore limited to that amount.) The Court of Appeals for the Third Circuit reversed our holding as to interest based on the liability limitation in section 6324(b).[4] Despite some distinguishing features, the result reached by the Court of Appeals in *Poinier v. Commissioner,* 858 F.2d 917 (3d Cir. 1988), is inconsistent with

---

[3] Those who argue that interest on a transferee's unpaid liability can only arise under State law miss the point that, in the instant case, all aspects of personal liability, including interest thereon, are governed by Federal law, specifically, secs. 6324(a)(2) and 6601. Thus, statements in prior cases such as *Lowy v. Commissioner,* 35 T.C. 393, 395 (1960), to the effect that transferee interest can only arise under State law, are inapposite because those cases were dealing with transferee liability that arose under State law.

[4] Sec. 6324(b), which creates limited personal liability for unpaid gift tax is, for purposes of this analysis, identical to sec. 6324(a)(2).

our holding in the instant case. In *Poinier,* the Court of Appeals for the Third Circuit stated:

> The Commissioner's position, accepted by the Tax Court, is that there is an entirely independent liability for interest, placed directly on the transferee, which arises at the time of service of a notice of transferee liability. This is not an easy argument to articulate, for unlike the donee liability provision in section 6324(b), the Commissioner can point to no specific code provision imposing such an independent liability on a transferee. * * * [*Id.* at 920.]

Our opinion today makes it clear that section 6601 is the specific code provision that imposes interest on petitioners' limited personal liability for the estate tax.

CHABOT, SWIFT, JACOBS, GERBER, PARR, and LARO, *JJ.*, agree with this concurring opinion.

HALPERN, *J.*, concurring: The issue is whether, notwithstanding the limitation on transferee liability found in section 6324(a)(2), a transferee under that section may be liable for interest under section 6601(a) such that his total liability exceeds the value, at the date of decedent's death, of the property received from the estate. The majority answers that question in the affirmative and I agree. I write separately, however, because I do not believe the majority's rationale supports the conclusion reached today. I offer the following as an alternative.

Section 6324(a)(2) imposes liability for unpaid estate taxes on a transferee of property from the estate.[1] Moreover, because section 6601(e)(1) provides that the Code's references to "tax" generally also refer to interest imposed on tax under that section, a transferee also is liable, under section 6324(a)(2), for interest imposed on the unpaid estate taxes.[2] Consequently, absent some limitation, a transferee would be liable, under section 6324(a)(2), not only for all unpaid estate taxes, but also for all section 6601 interest imposed thereon, no matter how great the unpaid estate tax, how great the section 6601 interest imposed thereon, or how minimal the value of the property received from the estate.

There is, however, a limitation precluding such a patently unfair and irrational result. Section 6324(a)(2), which creates the transferee's liability in the first instance, further provides that a transferee's liability is limited to "the extent of the value, at the time of decedent's death" of the property transferred. Thus, petitioners argue, their liability as transferees under section 6324(a)(2) is limited to

---

[1] For convenience, I sometimes refer to transferees to which sec. 6324(a)(2) applies merely as "transferees".

[2] In essence, liability for interest is incorporated by reference into sec. 6324(a)(2), by virtue of sec. 6601(e)(1).

$50,000, the value, at the time of decedent's death, of the property received—not the (approximately) $62,000 respondent seeks to collect.

The majority agrees with petitioners on that seemingly determinative point. The majority states, and I agree, that "The limitation imposed by section 6324(a)(2) applies to a transferee's liability for unpaid estate tax and for *interest accrued on unpaid estate tax thereon owed by a transferor*". Majority op. p. 6 (emphasis added). The majority finds that conclusion insufficient, however, to require a holding in favor of petitioner-transferees. In the view of the majority, a transferee not only is liable, under section 6324(a)(2), for the unpaid estate tax and interest of the *transferor,* but also has an *independent* liability for interest, to which the limitation of section 6324(a)(2) does not apply. The majority states:

> The limitation imposed by section 6324(a)(2) * * * does not apply to a transferee's liability for *interest* accrued on unpaid estate tax *owed by the transferee.* Section 6324(a)(2) imposes a direct, personal, and primary obligation on a transferee. Thus, interest accrues upon a transferee's personal liability for unpaid estate tax notwithstanding the limitation imposed by section 6324(a)(2) on a transferee's liability for amounts owed by a transferor. [Majority op. pp. 6-7; citations omitted; emphasis added.]

Thus, the majority explicitly relies upon the existence of two types of interest: interest owed by the transferor and interest separately owed by the transferee, the latter not being subject to the liability limitation of section 6324(a)(2). I too reach that conclusion, but I arrive at it by a path different than does the majority.

The majority reasons that a transferee liable under section 6324(a)(2) for certain deficiencies in tax (including in-

terest) of the estate also is liable for interest (under section 6601) simply because that liability is "direct, personal, and primary". Majority op. p. 6. I cannot agree. Certainly, as a general proposition, it must be conceded that not every (Federal) personal liability gives rise to a liability for interest under the Internal Revenue Code. An individual willfully destroying Federal property, for example, would in all likelihood be personally liable (to the United States) for the damage caused by that act. Nonetheless, no one would seriously argue that section 6601 of the Internal Revenue Code applies in that circumstance, because such liability is not *tax* liability, which, in general, describes the province of the Internal Revenue Code. The first inquiry, therefore, is whether a transferee's personal liability, imposed by section 6324(a)(2), is tax liability or, instead, some other personal liability imposed (as it happens) by Federal law. I contend that it is the latter.

First, section 6324(a)(2) provides merely that a transferee shall, to a limited extent, be personally liable for certain unpaid estate tax. Nothing in section 6324(a)(2) explicitly provides that such personal liability is tax liability (as opposed to a personal liability of the usual sort), nor has any argument been advanced in support of that inference.

Second, the statutory scheme not only fails to prove that section 6324(a)(2) transferee liability is tax liability but is unambiguously at odds with that proposition. If such were tax liability, then the Commissioner, without more, could issue a deficiency notice and assess a deficiency against a transferee in the same way as against a taxpayer. That, however, clearly is not the case.

Section 6901(a) provides a procedure through which the Commissioner may collect certain liabilities, including liabilities of transferees, in much the same way as she collects liabilities for tax.

> (a) Method of Collection.—The amounts of the following liabilities shall * * * [generally] be assessed, paid, and collected in the same manner *and subject to the same provisions and limitations* as in the case of the taxes with respect to which the liabilities were incurred:
>
> (1) Income, estate, and gift taxes.
>
> (A) Transferees.—The liability, at law or in equity, of a transferee of property—

The reason that section 6901 is needed is that the liabilities to which it applies are *not tax liabilities* and otherwise could not be collected in the manner, and subject to the same provisions and limitations, applicable to tax liability.[3] Accordingly, any liability to which section 6901 applies is not tax liability. Section 6901(h) provides that "the term 'transferee' * * * includes any person who, under section 6324(a)(2), is personally liable" for unpaid estate tax. Thus, the liability of a transferee under section 6324(a)(2) is a nontax liability that, solely by virtue of section 6901, may be collected in a similar manner as the tax liability from which it derives.

In his concurring opinion, Judge Ruwe suggests that the liability created by section 6324(a)(2), which he seemingly would concede is not an *actual* tax liability, nonetheless should be *treated* as if it were.

> whatever the date on which liability arises under section 6324(a)(2), the liability, at that point, cannot exceed the date-of-death value of the property received. On the other hand, at the time that personal liability comes into being, and the transferee becomes person-

---

[3] The alternative is that sec. 6901 is redundant and serves only to emphasize that certain tax liabilities may be assessed and collected as tax liabilities. Such a reading, to say the least, is highly implausible.

> ally liable to pay a limited amount of the estate tax liability, *that limited amount of liability* becomes a direct obligation of the transferee, which itself *is treated as a tax under title 26.* If it is not paid when due, section 6601 provides for interest on the unpaid amount. In this sense, it is interest on the transferee's personal liability, rather than interest on the estate's tax liability. [Ruwe, J., op. p. 1-2; emphasis added; footnote omitted.]

It seems fair, however, to ask: *Why* is the transferee liability created by section 6324(a)(2) treated as a tax? Neither the majority nor Judge Ruwe supplies an answer to that critical question.

I believe that the transferee liability created by section 6324(a)(2) *is,* at least in some respects, treated as a tax liability and the answer to *why* can be found in section 6901. Section 6901, as described above, permits respondent to treat transferee liability as tax liability in certain respects. In particular, it provides not only that transferee liability shall be assessed, paid, and collected in the same manner as the underlying tax but that such liability shall be subject to the same *provisions* (and limitations) as the underlying tax. Thus, I believe that section 6901 authorizes the Commissioner to treat transferee liability as tax liability for the purpose of imposing interest under section 6601 for payment not timely made. A two step analysis of the history of section 6901 confirms my view. First, section 311 of the 1939 Code (the immediate predecessor of section 6901) explicitly provided that transferee liability would be treated like tax liability to which the applicable interest provision would apply.[4]

---

[4] To be more precise, we might refer to sec. 900 of the 1939 Code, which deals specifically with a transferee's liability for unpaid *estate* tax, whereas sec. 311 is the more general provision, which deals with

Second, there is no indication that this scheme was intended to be abandoned in the 1954 Code.

Section 311 of the 1939 Code provided in pertinent part as follows:

> Sec. 311. TRANSFERRED ASSETS
>
> (a) Method of Collection.—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and *subject to the same provisions and limitations* as in the case of a deficiency in a tax imposed by this chapter (*including the provisions in case of delinquency in payment after notice and demand,* the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):
>
> (1) Transferees.—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

Thus, the scheme proposed by Judge Ruwe clearly appears to have been the case under 1939 Code section 311. Under that provision, a transferee would assume (to a limited extent) certain tax liabilities of the transferor, including additions to tax and interest. That transferee

---

a transferee's liability for unpaid *income* tax of a transferor. The effect of 1939 Code sec. 900 mirrors that of 1939 Code sec. 311, however, and for convenience we refer to the latter. See H. Rept. 356, 69th Cong., 1st Sess. (1926), 1939-1 C.B. (Part 2) 361, 376 (incorporating by reference the legislative history of 1926 Code sec. 280 (the predecessor of 1939 Code sec. 311) to 1926 Code sec. 316 (the predecessor of 1939 Code sec. 900).

liability would be assessed, collected, paid, and *subject to the same provisions and limitations*—including the then-applicable interest provision on a delinquency in payment after notice and demand—as if it were a tax. Thus, in *Estate of Stein v. Commissioner,* 37 T.C. 945, 960 (1962), we concluded that in cases of transferee liability "respondent is entitled to interest thereon just as he is so entitled on any deficiency." Accord *Patterson v. Sims,* 281 F.2d 577 (5th Cir. 1960). See also H. Rept. 356, 69th Cong., 1st Sess. (1926), 1939-1 C.B. (Part 2) 361, 372.[5]

The next issue, therefore, is whether the 1954 Code departed radically from that scheme, providing instead that respondent no longer would be entitled to interest in such cases "just as he is so entitled on any deficiency."

---

[5] H. Rept. 356, 69th Cong., 1st Sess. (1926), 1939-1 C.B. (Part 2) 361, is the conference report accompanying H.R. 1, which became the Revenue Act of 1926, 44 Stat. 9. The Revenue Act of 1926 is the origin of those provisions applying deficiency procedures against transferees. H. Rept. 356, 1939-1 C.B. (Part 2) at 372 provides as follows:

> Under the amendment the liability of the taxpayer for the tax, including all interest and penalties, is fixed as of the time of the transfer of the assets. No further interest subsequently accrues upon such liability as assumed by the transferee, except the interest under section 276(b) and (c) for failure to pay upon notice and demand after the outlined procedure has been completed and interest at 6 per cent a year for reimbursing the Government at the usual rate for loss of the use of money due it.

Sec. 276(b) of the 1926 Act applies interest to a deficiency that is not paid in full within 10 days from notice and demand. Sec. 276(c) of that act applies in lieu of sec. 276(b) (and (a)) in certain cases concerning fiduciaries and provides interest at the rate of 6 percent. Accordingly, under the 1926 Act, a transferee was responsible neither for interest accruing against the transferor after the date of the transfer nor for Federal interest on the transferee's obligation except as provided by sec. 276(b) or (c) of the 1926 Act.

Like the 1939 Code the 1954 Code provides that transferee liability not only is assessed, paid, and collected as if it were tax liabilities, but also is "*subject to the same provisions and limitations*". It must be admitted, however, that 1939 Code section 311's explicit statement that such provisions and limitations include "provisions in case of delinquency in payment after notice and demand" (interest) appears nowhere in section 6901 of the 1954 Code. Accordingly, it can be argued that, in deleting the reference to notice and demand, Congress' intention was to rescind respondent's right to otherwise-applicable interest on transferee's tax-like liability. Were that Congress' intent, however, I believe the legislative history would contain some indication to that effect. I have found none and conclude that Congress merely deleted an unnecessary specific reference, intending section 6901 to be similar to 1939 Code section 311.

It is impossible, however, to reach the exact same result under the 1954 Code as was reached under the 1939 Code. Section 311 of the 1939 Code, as observed above, permitted respondent to apply the notice and demand provision to a transferee liability as if it were tax liability. The notice and demand provision was as follows:

> Sec. 294. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.
>
> * * * * *
>
> (b) Deficiency.—Where a deficiency * * * is not paid in full within ten days from the date of notice and demand from the collector, *there shall be collected as part of the tax, interest * * * from the date of such notice and demand until it is paid.* [1939 Code sec. 294(b); emphasis added.]

No notice and demand provision exists, however, under the 1954 Code. The present interest provision (where applicable) entitles respondent to interest commencing not at the time of notice and demand but as early as the time of the transfer:

> Sec. 6601.—INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT OF TAX.
>
> (a) General Rule. If any amount of tax imposed by this title * * * is not paid on or before the last date prescribed for payment, *interest on such amount * * * shall be paid for the period from such last date to the date paid.* [Emphasis added.]

Where transferee liability is concerned, the last date prescribed for payment would be the date the liability arises, section 6601(b)(5), which would be no earlier than the date of the transfer.

Thus, it seems evident that the exact same result does not obtain under the 1954 Code as under the 1939 Code. As for the precise nature of the changes wrought in 1954, two interpretations stand out as reasonable alternatives. First, Congress may have intended to continue the general rule that respondent would be entitled to appropriate interest on transferee liability (as if it were tax liability), but determined that interest more appropriately should be payable from (generally) the time of the transfer rather than the time of notice and demand. Second, Congress may have intended to abandon the general rule that respondent was entitled to interest on transferee liability as on tax liability.

Congress made no announcement of a drastic change, in this regard, from the 1939 scheme, and I therefore conclude that whichever interpretation of section 6901 is most consistent with the preceding scheme is the better. As sug-

gested above, I believe Congress would have considered the fundamental characteristic of the 1939 scheme to be that transferee liability is treated like tax liability for the purpose of respondent's entitlement to appropriate interest thereon. How much interest is appropriate would have been a subordinate consideration.

Accordingly, I would conclude that section 6901 entitles respondent to interest on the transferee liability, as if it were tax liability, under section 6601. The only role section 6324(a)(2) plays in that scheme is in providing the predicate for a person's status as a transferee under section 6901. See sec. 6901(h). Thus, the same result would attach to *any* transferee liability subject to section 6901, notwithstanding that the source of such liability may be State law (as in the case of an income tax debtor) instead of section 6324. As observed above, section 6601(a) provides that interest shall be payable from the "last date prescribed for payment" which is the date the liability for tax arises, section 6601(b)(5)—no earlier than the date of the transfer.[6]

In light of the foregoing, I concur in the result reached by the majority.

CHIECHI, *J.*, agrees with this concurring opinion.

---

[6] In *Estate of Stein v. Commissioner*, 37 T.C. 945, 960 (1962), we stated that only upon sending notice to the transferee is respondent entitled to interest under sec. 6601 (State law being required to supply the right to interest prior to such notice and demand). That case, however, in large part, referred to the 1939 Code rather than that of 1954 and the lion's share of attention seemingly was given to the former rather than the latter. Further, we relied heavily upon *Patterson v. Sims*, 281 F.2d 577 (5th Cir. 1960), a case decided exclusively under the 1939 Code. In any event, it was unnecessary in *Stein* to carefully consider whether sec. 6601 created a Federal right to interest from the date of the transfer, because we determined that State law supplied that right. Accordingly, I do not think *Stein* precludes us from reading sec. 6601 in accordance with its clear meaning.

COLVIN, *J.*, dissenting: I respectfully dissent because I believe the majority subjects petitioners to tax liability to an extent greater than the limit explicitly provided by section 6324(a)(2).

I.

The language of section 6324(a)(2) is clear. It provides that a transferee of an estate is personally liable for unpaid estate taxes of the transferor to the extent of the value at the time of the decedent's death of property received by the transferee which was included in the gross estate. Section 6324(a)(2) provides in pertinent part that:

> (2) Liability Of Transferees And Others.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee * * * [or certain others] * * * who receives * * * property included in the gross estate * * *, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. * * *

A similar rule extends gift tax liability to a transferee of a gift to the extent of the value of the gift. Sec. 6324(b).

The estate in this case had an estate tax deficiency (not including interest) of $62,378.48. Majority op. at 2. As of October 6, 1989, that liability, plus interest thereon, remained unpaid. Majority op. at 3. On that date, respondent mailed separate notices of transferee liability to petitioners, each of whom had received proceeds of $50,000 from an insurance policy on the decedent's life. Majority op. at 3.

The first step in statutory construction is an analysis of the statutory language. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979). Omitting language not relevant here, section 6324(a)(2) plainly says that, if estate tax "is not

paid when due, * * * the transferee * * * who receives * * * property included in the gross estate, * * * to the extent of the value * * * of such property, shall be personally liable for such tax."

Section 6324(a)(2) does two things. First, it makes a transferee of an estate personally liable for the transferor's tax. Liability for tax includes liability for interest. Sec. 6601(e)(1). Therefore, section 6324(a)(2) makes the transferee personally liable for interest applicable to the tax deficiency of the transferor. That liability for interest runs from the due date of the return until the date the tax is paid. Sec. 6601(a).

Second, section 6324(a)(2) imposes a limit on the transferee's liability. Specifically, the transferee's liability is limited to the value of the property included in the decedent's gross estate and received by the transferee. Sec. 6324(a)(2). The limit on the transferee's liability plainly applies to the transferee's liability for interest. Sec. 6324(a)(2). Thus, the limit on liability applies to both taxes and interest, including interest arising after the transfer, for which the transferee is liable under section 6324(a)(2).

II.

The majority recognizes that personal liability of a transferee exists because of section 6324(a)(2), and that the transferee's liability includes liability for interest until the deficiency is paid. However, the majority sees the liability imposed by section 6324(a)(2) as two separate liabilities. The first is liability for the transferor's tax and interest until the later of the time of the transfer or the due date of the return. Majority op. at 5 n.8. The majority applies the limit on liability in section 6324(a)(2) only to that liability. The second liability the majority sees in section 6324(a)(2) is the transferee's liability for interest arising after that

time. The majority does not believe the second liability is subject to the section 6324(a)(2) limit on liability, in spite of the fact that the statute juxtaposes personal liability on the transferee with the limit.

Section 6324(a)(2) does not enunciate the two liabilities the majority sees; it provides for only one liability, limited to the value of property received by the transferee. The majority concludes that the limit on the transferee's liability ceases to apply at the later of the due date of the return or the time of the transfer. Majority op. at 6. This differs from the Court of Appeals for the Third Circuit's opinion in *Poinier v. Commissioner,* 858 F.2d 917 (3d Cir. 1988), revg. in part 86 T.C. 478 (1986) (interpreting section 6324(b), which provides limited transferee liability for gift tax, consistently with this dissent's interpretation of section 6324(a)(2)). In our opinion in *Poinier v. Commissioner,* 86 T.C. at 488-490, however, we held that the limit does not apply to interest arising after issuance of the notice of transferee liability. This confusion in identifying the point at which the limit purportedly does not apply is understandable because no such point is provided by section 6324(a)(2). In fact, section 6324(a)(2) provides an absolute limit on transferee liability.

III.

I agree with the majority's analysis that section 6324(a)(2) imposes liability for the transferee of an estate, which, under section 6601(e)(1), includes interest. This imposition of liability for interest is consistent with the concept that tax underpayments should bear interest. The limit on transferee liability provided in section 6324(a)(2) may have less effect on this interest liability than appears at first because it would be "comparatively rare" for transferred property to be exhausted by the tax liability of

the transferor. *Poinier v. Commissioner,* 858 F.2d 917, 923 (3d Cir. 1988), revg. in part 86 T.C. 478 (1986). This would occur where the Commissioner issues notices of transferee liability which are at least equal in value to the estate tax deficiency and interest that later applies. It could also occur if the case is quite old, causing the interest on the transferor's liability to grow large in proportion to the deficiency.

The estate tax deficiency in the instant case is $62,378.48, not including interest. Respondent issued two notices of transferee liability, each to individuals who received $50,000 which was included in the estate. Under the interpretation in this dissent, respondent may collect up to $50,000 from each transferee, which would represent all of the deficiency and up to $37,621.52 in interest. Interest may exceed $37,621.52 because it has been running since the due date of the return, probably in 1982. There are no "equities favoring a creative rewriting" of section 6324(a)(2) in these circumstances. *Poinier v. Commissioner, supra* at 923. It is fully appropriate for us to apply the limitation on transferee liability in section 6324(a)(2) as written.

It was not patently unreasonable for Congress to limit the total liability of transferees to the value of the property received. *Poinier v. Commissioner, supra* at 922. It is "both consistent with [its] plain language * * * and sensible" to give the limitation on the transferee's liability as broad a scope as the liability itself. See *Poinier v. Commissioner, supra* at 920. The limitation is plainly stated in the statute, and we should give it full effect.

HAMBLEN, CLAPP, WELLS, WHALEN, and BEGHE, *JJ.*, agree with this dissent.

APPENDIX C

T.C. Memo. 1992-199

UNITED STATES TAX COURT

GABRIEL J. BAPTISTE, JR., TRANSFEREE, PETITIONER *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 383-90.
Filed: April 1, 1992.

MEMORANDUM FINDINGS OF FACT AND OPINION

WHITAKER, *Judge*: This matter is before the Court on respondent's motion for summary judgment filed pursuant to Rule 121.[1] Respondent determined a liability against petitioner for estate tax in the amount of $50,000, plus interest as provided by law, as insurance beneficiary and transferee of property of the estate of Gabriel J. Baptiste, Barbara Baptiste, Statutory Executrix (hereinafter the transferor). The issues presented for decision are: (1) Whether this Court's decision in *Estate of Baptiste v. Commissioner,* docket No. 44928-85, is res judicata as to the amount of estate tax imposed on the transfer of Gabriel J. Baptiste's estate for purposes of determining the amount of personal liability imposed on petitioner pursuant to section 6324(a)(2); and (2) whether petitioner's personal liability under section 6324(a)(2) constitutes a liability at law for purposes of section 6901(a)(1).

[1] Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code as amended.

On January 2, 1990, petitioner filed a petition with this Court contesting respondent's determined liability. On May 8, 1990, respondent filed an answer to the petition wherein respondent admitted and denied certain allegations contained in the petition. Additionally, respondent's answer set forth affirmative allegations in support of respondent's determination that petitioner was liable as a transferee at law for the deficiency in estate tax due from the transferor. Petitioner did not file a reply in response to the affirmative allegations set forth in respondent's answer. On June 29, 1990, respondent filed a motion requesting that specified allegations set forth in the answer be deemed admitted. On July 3, 1990, respondent's motion was granted. The findings of fact set forth herein reflect the specified allegations deemed admitted in accordance with Rule 37(c).

On December 14, 1990, respondent filed a motion for summary judgment requesting an adjudication in respondent's favor on all legal issues in controversy. In support of her motion, respondent relied on the pleadings in this case, the specified allegations deemed admitted, and the decision of this Court in *Estate of Baptiste v. Commissioner, supra.* On September 23, 1991, petitioner filed a brief in opposition to respondent's motion for summary judgment contending that genuine issues of material fact remain unresolved.

Under Rule 121(b), summary judgment is appropriate "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." *Zaentz v. Commissioner,* 90 T.C. 753, 754 (1988); *Naftel v. Commissioner,* 85 T.C. 527, 529 (1985). A partial summary adjudication may be

made which does not dispose of all the issues in the case. Rule 121(b). The moving party bears the burden of proving that no genuine issue exists as to any material fact and that he is entitled to judgment on the substantive issues as a matter of law. *Espinoza v. Commissioner,* 78 T.C. 412, 416 (1982). In deciding whether to grant summary judgment, we view the factual materials and inferences drawn therefrom in the light most favorable to the party opposing the motion. *Estate of Gardner v. Commissioner,* 82 T.C. 989, 990 (1984); *Jacklin v. Commissioner,* 79 T.C. 340, 344 (1982). Specified allegations deemed admitted in accordance with Rule 37(c), however, are conclusively established and may be relied upon by respondent even as to matters wherein respondent bears the burden of proof. *Marshall v. Commissioner,* 85 T.C. 267, 272-273 (1985); *Doncaster v. Commissioner,* 77 T.C. 334, 336-338 (1981).

FINDNGS OF FACT

Gabriel J. Baptiste (hereinafter decedent) died on September 26, 1981. At the date of his death, decedent was a United States citizen possessing incidents of ownership with respect to certain insurance policies on his life. At the time of decedent's death, the value of the proceeds of insurance on decedent's life payable to petitioner was $50,000. On or about November 16, 1981, $50,000 was transferred to petitioner as a beneficiary of the insurance on decedent's life.

On December 29, 1982, the transferor filed a United States Estate Tax Return. On September 18, 1985, respondent mailed a statutory notice of deficiency to the transferor determining a deficiency in estate tax. On December 16, 1985, the transferor timely filed a petition with this Court contesting the notice of deficiency issued with respect to the transferor's estate tax. On May 13,

1988, a decision was entered by this Court in *Estate of Baptiste v. Commissioner, supra,* embodying a stipulated deficiency in estate tax due from the transferor in the amount of $62,378.48. As of October 6, 1989, the date a statutory notice of liability was issued to petitioner, the outstanding estate tax liability of the transferor, plus interest thereon as provided by law, remained unpaid.

OPINION

The first issue for decision is whether this Court's decision in *Estate of Baptiste v. Commissioner, supra,* is res judicata as to the amount of estate tax imposed on the transfer of decedent's estate for purposes of determining the amount of personal liability imposed on petitioner pursuant to section 6324(a)(2). Respondent contends that this Court's decision in *Estate of Baptiste* is res judicata, and petitioner contends that this Court's decision in *Estate of Baptiste* is not res judicata, for purposes of determining the amount of personal liability imposed on petitioner pursuant to section 6324(a)(2).

The doctrine of res judicata provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent judicial proceeding involving the same cause of action. *Commissioner v. Sunnen,* 333 U.S. 591, 597 (1948); *Krueger v. Commissioner,* 48 T.C. 824, 828 (1967). It is well established that the doctrine of res judicata is applicable in the field of Federal taxation. *United States v. International Building Co.,* 345 U.S. 502 (1953); *Commissioner v. Sunnen, supra* at 598; *Tait v. Western Maryland Railway Co.,* 289 U.S. 620 (1933); *Krueger v. Commissioner, supra* at 830.

The doctrine of res judicata is applicable when an identical issue is contested in separate proceedings arising out of a single cause of action. *United States v. International Building Co., supra; Commissioner v. Sunnen, supra* at 597; *Krueger v. Commissioner, supra* at 828. The single cause of action giving rise to these proceedings is the executrix and petitioner's respective obligation to pay, and the Commissioner's right to collect, the estate tax imposed on the transfer of decedent's estate. See *Commissioner v. Sunnen, supra; Estate of Hunt v. United States,* 309 F.2d 146, 148 (5th Cir. 1962). In *Estate of Baptiste v. Commissioner, supra,* this Court decided the amount of estate tax the executor was liable for pursuant to section 2001. In this proceeding, we must decide the amount of estate tax petitioner is liable for pursuant to section 6324(a)(2). If the doctrine of res judicata is applicable to these proceedings, then this Court's determination of the amount of estate tax the executor was liable for will be controlling as to the amount of estate tax petitioner is liable for.

The doctrine of res judicata applies if the following requirements are met: (1) The issue contested in both proceedings is identical; (2) the parties to the subsequent proceedings are the same as, or are in privity with, the parties to the earlier proceeding; and, (3) the earlier proceeding resulted in a final judgment on the merits. *Nevada v. United States,* 463 U.S. 110, 130 (1983); *Federated Department Stores, Inc. v. Moitie,* 452 U.S. 394, 398 (1981); *Commissioner v. Sunnen, supra* at 597. Each requirement for a finding of res judicata is considered below.

The issue decided by this Court in *Estate of Baptiste v. Commissioner, supra,* and contested by petitioner in this proceeding, is the amount of estate tax imposed on the transfer of decedent's estate by chapter 11 of the Internal Revenue Code. Pursuant to section 2002, the estate tax is

payable by the executor of the estate. Pursuant to section 6324(a)(2), if the estate tax is not paid when due, then certain beneficiaries of the estate are personally liable for the tax to the extent of the value, at the time of the decedent's death, of any property received from the estate. Thus, the amount of an executor's liability under section 2002, and the amount of a beneficiary's liability under section 6324(a)(2), are both determined by the amount of estate tax imposed by chapter 11. Consequently, the issue decided in *Estate of Baptiste,* and the issue contested in this proceeding, are identical.

While petitioner was not a party to the earlier proceeding, this Court has consistently found that transferors and transferees are in privity for purposes of the doctrine of res judicata. *Krueger v. Commissioner, supra* at 829; *Estate of Egan v. Commissioner,* 28 T.C. 998, 999 (1957), affd. 260 F.2d 779 (8th Cir. 1958); *Jahncke Service, Inc. v. Commissioner,* 20 B.T.A. 837 (1930). Chapter 11 imposes a tax on the transfer of a decedent's estate. Pursuant to section 2042(2), the proceeds of certain insurance on a decedent's life are included in the decedent's gross estate. Petitioner was a beneficiary of proceeds of insurance includable in decedent's gross estate. Pursuant to section 2002 and section 6324(a)(2), the executor and petitioner, respectively, are liable for the tax imposed on the transfer of decedent's estate. Thus, while the proceeds of insurance on decedent's life were not includable in decedent's probate estate, and did not literally pass from the transferor to petitioner, the transferor and petitioner were nonetheless in privity by virtue of the decedent's possession of incidents of ownership in the insurance on his life at the time of his death. Consequently, for purposes of determining the amount of tax imposed on the transfer of decedent's estate, the transferor and petitioner are in privity. See *Porter v. Commissioner,* 52 T.C. 515 (1969).

This Court's decision in *Estate of Baptiste v. Commissioner, supra,* was entered pursuant to an agreement between the parties and not as a consequence of a trial on the merits. Petitioner asserts that the absence of a trial or evidentiary hearing precludes our finding that the earlier decision constitutes a final judgment on the merits. While we are sympathetic to petitioner's assertion, we do not agree with it. In *Krueger v. Commissioner, supra* at 830, this Court held that a stipulated decision entered against a transferor estate was binding on transferees of the estate in accordance with the doctrine of res judicata. Our reasoning therein was as follows:

> The theory upon which the doctrine of res judicata is based is that the issue is decided after the parties have had an opportunity to raise all pertinent considerations; if the parties have agreed to waive that opportunity, there is no reason to provide them with another occasion to present additional considerations as to the merits of the issue. Furthermore, it would be a strange rule to confer upon the transferee broader rights than the transferor by allowing the transferee to relitigate an issue when a transferor is denied that privilege. Finally, the reasons for putting an end to litigation apply with equal force when transferee liability is being asserted. [*Krueger v. Commissioner,* 48 T.C. at 830.]

The reasoning set forth in *Krueger v. Commissioner, supra,* is as compelling today as it was when written. Therefore, for purposes of the doctrine of res judicata, this Court's decision in *Estate of Baptiste* constitutes a final judgment on the merits.

Finally, petitioner contends that, even if the doctrine of res judicata is otherwise applicable, principles of public policy and fundamental fairness preclude its application in

this instance. Specifically, petitioner asserts that the amount of estate tax imposed on the transfer of decedent's estate was incorrect, that the bulk of the decedent's assets were located in Venezuela and were under the control of the decedent's wife, who refused to pay any portion of the estate tax imposed on the transfer of decedent's estate, and that respondent is penalizing a United States citizen while allowing a nonresident alien to go "scot-free". In *Federated Department Stores, Inc. v. Moitie,* 452 U.S. 394 (1981), the Supreme Court discussed the relationship between public policy and the doctrine of res judicata:

> The doctrine of res judicata serves vital public interests beyond any individual judge's ad hoc determination of the equities in a particular case. There is simply "no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of res judicata." * * * We have stressed that "[the] doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace.' which should be cordially regarded and enforced by the court" * * * [*Federated Department Stores, Inc. v. Moitie,* 452 U.S. at 401; citations omitted.]

In reversing the Ninth Circuit Court of Appeals, the Supreme Court noted that the Court of Appeals' reliance on "public policy" was misplaced as the Court had long recognized that "public policy" dictates that there be an end to litigation. We consider the Supreme Court's rationale in *Federated Department Stores, Inc. v. Moitie, supra,* to be applicable in this instance and, therefore, to be dispositive of petitioner's contention.

We have determined that the issue contested in both proceedings is the same, that the transferor and petitioner

are in privity, and that this Court's decision in *Estate of Baptiste v. Commissioner, supra,* constitutes a final judgment on the merits. Therefore, in accordance with the doctrine of res judicata, we hold that this Court's decision in *Estate of Baptiste* is determinative of the amount of estate tax imposed on the transfer of decedent's estate for purposes of determining the amount of personal liability imposed on petitioner pursuant to section 6324(a)(2).

The final issue for decision is whether petitioner's personal liability under section 6324(a)(2) constitutes a liability at law for purposes of section 6901(a)(1), thereby subjecting petitioner to the method of collection applicable in the case of transferred property. Pursuant to section 6902, the burden of proof is upon respondent to show that petitioner is liable as a transferee of property of the decedent.

Respondent contends that petitioner's personal liability as a beneficiary of the proceeds of insurance on decedent's life pursuant to section 6324(a)(2) constitutes a liability at law for purposes of section 6901(a)(1). Conversely, petitioner contends that his personal liability under section 6324(a)(2) does not constitute a liability at law for purposes of section 6901(a)(1), and that the existence and extent of petitioner's liability for purposes of section 6901(a)(1) must be determined in accordance with State law.

Pursuant to section 6901(a)(1), the amount for which a transferee of property is liable, at law or in equity, is to be assessed, paid, and collected in the same manner, and subject to the same provisions and limitations, as the deficiency with respect to which the liability was incurred. Section 6901 does not impose a liability for unpaid taxes upon a transferee; rather, section 6901 authorizes the assessment and collection of unpaid taxes for which a transferee is otherwise liable. *Commissioner v. Stern,* 357 U.S. 39 (1958). To subject petitioner to the method of collection

sanctioned by section 6901, it must be shown that the estate tax was not paid when due, that petitioner is a transferee of property of the decedent, and that petitioner is liable, at law or in equity, for the unpaid estate tax. See *Groetzinger v. Commissioner,* 69 T.C. 309, 316 (1977).

On May 13, 1988, a decision was entered by this Court in *Estate of Baptiste v. Commissioner, supra,* embodying a stipulated deficiency in estate tax due from the transferor in the amount of $62,378.48. The decision became final on August 11, 1988. The deficiency in estate tax remained unpaid as of October 6, 1989, when a statutory notice of liability was mailed to petitioner. Consequently, the estate tax was not paid when due.

As defined in section 6901(h), the term "transferee" includes, with respect to estate taxes, any person who, under section 6324(a)(2), is personally liable for any part of the estate tax. Pursuant to section 6324(a)(2), a beneficiary who receives property included in the gross estate is personally liable for the estate tax to the extent of the value, at the time of the decedent's death, of such property. Pursuant to section 2042(2), a decedent's gross estate includes proceeds of insurance on the decedent's life if the decedent possessed, at the date of his death, incidents of ownership in the policy.

At the date of his death, decedent possessed incidents of ownership in the insurance policies on his life. Therefore, pursuant to section 2042(2), the proceeds of insurance on decedent's life were required to be included in decedent's gross estate. On or about November 16, 1981, $50,000 was transferred to petitioner as a beneficiary of the proceeds of insurance on decedent's life. Therefore, pursuant to section 6324(a)(2), petitioner is personally liable for the transferor's unpaid estate tax to the extent of $50,000—the value, at the time of decedent's death, of petitioner's interest in the proceeds of insurance on decedent's life. Con-

sequently, in accordance with section 6901(h), and pursuant to petitioner's personal liability as a beneficiary of the proceeds of insurance on decedent's life, petitioner is a transferee of property of the decedent.

Respondent contends that petitioner's personal liability under section 6324(a)(2) constitutes a liability at law for purposes of section 6901(a)(1). We agree. Section 6324(a)(2) imposes a direct and personal liability on petitioner as a beneficiary of the proceeds of insurance on decedent's life. *Schuster v. Commissioner,* 312 F.2d 311 (9th Cir. 1962), affg. on this issue 32 T.C. 998, 1006 (1959); *Groetzinger v. Commissioner, supra,* at 316. Petitioner's contention that the existence and extent of his liability for purposes of section 6901(a)(1) must be determined in accordance with State law would have merit if the liability imposed on petitioner were for a deficiency in decedent's income tax, or if the proceeds of insurance on decedent's life had not been included in decedent's gross estate pursuant to section 2042. Section 6324(a)(2) only applies to the estate tax imposed by chapter 11, and to property included in the gross estate under section 2034 to 2042, inclusive. In this instance, however, Federal law imposes a direct and personal liability on petitioner as a beneficiary of the proceeds of insurance on decedent's life. Consequently, petitioner is liable at law for the unpaid estate tax to the extent of the value, at the time of decedent's death, of petitioner's interest in the proceeds of insurance on decedent's life.

Respondent has met her burden of proof in showing that the estate tax was not paid when due, that petitioner is a transferee of property of the decedent, and that petitioner is liable at law for the transferor's unpaid estate tax. Consequently, we hold that petitioner's personal liability under section 6324(a)(2) constitutes a liability at law for

purposes of section 6901(a)(1), thereby subjecting petitioner to the method of collection applicable in the case of transferred property to the extent of $50,000.

Our determination regarding petitioner's personal liability under section 6324(a)(2)—to the extent of the value, at the time of decedent's death, of petitioner's interest in the proceeds of insurance on decedent's life—is not dispositive of the entire matter before the Court. Respondent determined a liability against petitioner for estate tax in the amount of $50,000 "plus interest as provided by law." Neither petitioner nor respondent has addressed the legal and factual issues raised by a determined liability for interest where the value of the property transferred to petitioner ($50,000) is less than the amount of the transferor's deficiency ($62,378.48). See *Patterson v. Sims,* 281 F.2d 577, 580-581 (5th Cir. 1960); *Estate of Stein v. Commissioner,* 37 T.C. 945, 959-960 (1962); but cf. *Poinier v. Commissioner,* 858 F.2d 917 (3d Cir. 1988), affg. in part and revg. in part 86 T.C. 478, 488-490 (1986). Therefore, we reserve judgment as to the existence and extent of petitioner's liability for interest under both State and Federal law for the periods before and after respondent's issuance of the statutory notice of liability on October 6, 1989.[2]

In conclusion, respondent's motion for summary judgment will be granted to the extent of petitioner's personal liability under section 6324(a)(2), and respondent's motion for summary judgment will be denied (but without prejudice) to the extent of petitioner's asserted liability for interest under State and Federal law.

An appropriate order will be issued.

---

[2] The Tax Court has jurisdiction over the interest liability of a transferee under section 6901. *Lowy v. Commissioner,* 35 T.C. 393 (1960); *508 Clinton Street Corp. v. Commissioner,* 89 T.C. 352, 354 (1987).

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RICHARD M. BAPTISTE, TRANSFEREE, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Appeal from a Decision of the United States Tax Court.

Aug. 29, 1994.

Before ANDERSON and BIRCH, Circuit Judges, and CONWAY*, District Judge.

BIRCH, Circuit Judge:

This case presents three challenges by the appellant, Richard M. Baptiste ("Baptiste"), to the tax court's grant of summary judgment to the government. Initially, Baptiste argues that his status as a transferee of an estate must be decided under state law and that genuine issues of material fact remains as to that issue. Next, he contends that the tax court erred in applying the doctrine of res

---

* Honorable Anne Callaghan Conway, U.S. District Judge for the Middle District of Florida, sitting by designation.

judicata to him, a transferee of an estate, on the issue of the estate tax liability of the estate. Lastly, he asserts that the tax court misinterpreted the scope of the statutory limit on his personal liability when it determined that he was responsible for interest on his liability in excess of the value of the property he received from the estate. Because we agree with the tax court in all respects, we affirm the grant of summary judgment to the government.

I. BACKGROUND

Gabriel J. Baptiste (the "decedent"), the father of the appellant, died on September 26, 1981. He was a United States citizen, and at the time of his death he possessed incidents of ownership in an insurance policy on his life with a face amount of $150,000. At the time of his father's death, Baptiste was one of three named beneficiaries of this policy, each of whom held a one-third interest. He received $50,000 from the distribution of the proceeds on this policy on or about November 16, 1981.

On December 29, 1982, the decedent's estate filed an estate tax return. Thereafter the government issued a statutory notice of deficiency to the estate. This deficiency was contested by the executrix of the estate, Barbara Baptiste, the appellant's sister, by filing a petition with the tax court. The government and the executrix reached an agreement that an estate tax deficiency of $62,378.48 was owed to the government. On the basis of this agreement, the tax court, on May 13, 1988, entered a stipulated decision that the estate owed the agreed deficiency. The estate never satisfied this obligation.

On October 6, 1989, based on Baptiste's alleged status as a transferee of the estate, the government issued a statutory notice of deficiency to Baptiste, asserting an assessment for the unpaid estate tax in the amount of

$50,000 plus interest as provided by law. Baptiste filed a petition in the tax court on January 2, 1990, to determine his liability on that assessment. In that petition, Baptiste did not challenge his status as a transferee, but rather argued that, for various reasons, the amount of estate tax assessed by the tax court in the earlier proceeding was incorrect.

In its response, the government, in addition to admitting and denying certain of Baptiste allegations, affirmatively asserted that Baptiste was liable, as a transferee at law, for the deficiency in the estate tax due.[1] Baptiste

---

[1] Specifically, the government stated:

> 6. FURTHER ANSWERING the amended petition, and in support of the determination that the petitioner [Baptiste] is liable as a transferee at law of the Estate of Gabriel J. Baptiste, deceased, Barbara Baptiste. Statutory Executrix, transferor, for the deficiency in estate tax due from said transferor, plus interest thereon as provided by law, the respondent [government] alleges:
>
> 1) Gabriel J. Baptiste (hereafter "decedent"), a United States citizen, died on September 26, 1981.
>
> 2) On or about November 16, 1981, the transferor transferred $50,000 to petitioner, the amount receivable by petitioner as a beneficiary of insurance policies on the life of the decedent with respect to which policies the decedent possessed the incidents of ownership as of the date of his death.
>
> 3) Pursuant to I.R.C. § 2042, the value of the proceeds of said life insurance policies are includable in the gross estate for purposes of determining the estate tax liability.
>
> 4) Pursuant to I.R.C. § 6324(a)(2), petitioner, as insurance beneficiary and transferee of the proceeds of life insurance policies on the life of the decedent, to the extent of the value of such proceeds at the time of the decedent's death, is personally liable for the estate tax of the transferor.
>
> 5) The value of the portion of the proceeds of the life insurance policies on the life of the decedent received by petitioner was $50,000.00 as of the date of decedent's death.
>
> 6) The estate of Gabriel J. Baptiste, deceased, Barbara Baptiste, Statutory Executrix, filed its United States Estate Tax Return on December 29, 1982.

did not respond to the government's affirmative allegations, thereby failing to comply with Tax Court Rule 37 [2], which requires that a petitioner answer any affirmative allegations of the respondent, either admitting or denying them. On July 3, 1990, the government filed a motion under Rule 37(c), requesting that the court find that these allegations be deemed admitted. The court, on July 9, 1990, specifically granted Baptiste additional time, until August 9, 1990, to answer the allegations and avoid them being deemed admitted. On August 20, 1990, Baptiste having not responded to the affirmative allegations of the

---

7) On March 11, 1986, the respondent mailed a statutory notice of deficiency, by certified mail, to the Estate of Gabriel J. Baptiste, Barbara Baptiste, Statutory Executrix, the transferor, in which it was determined that there was a deficiency in estate tax due from the transferor.

8) The transferor timely filed a petition with this Court on December 16, 1985, entitled *Estate of Gabriel J. Baptiste, deceased, Barbara Baptiste, Statutory Executrix v. Commissioner*, Docket No. 44928-85, contesting the deficiency determined in the notice of deficiency issued with respect to the transferor's estate tax.

9) A decision was entered by this Court in *Estate of Baptiste, supra.*, on May 13, 1988, stipulating that there is a deficiency in estate tax due from the transferor in the amount of $62,378.48.

10) As of the date of the issuance of the statutory notice of liability to petitioner, the outstanding estate tax liability of the transferor, and interest thereon as provided by law, remained unpaid.

Government Answer to Amended Petition at 1-3. The date given in paragraph 7 for the mailing of the statutory notice of deficiency, March 11, 1986, is clearly erroneous, as it is well after the petition was filed by the transferor estate. The tax court decision gives the date of mailing of the statutory notice of deficiency as September 18, 1985. This error is irrelevant to our analysis.

[2] Hereinafter "Rule" will refer to the Tax Court Rules.

government, the court entered an order deeming said allegations admitted by Baptiste.

The government filed a motion for summary judgment requesting an adjudication in its favor on all issues. In this motion, the government relied in part on the deemed admissions of Baptiste. At this juncture, for the first time, Baptiste obtained counsel. Baptiste's attorney moved to suspend the proceedings in order to give him an opportunity to examine pertinent records. The motion alleged that Baptiste intended to seek a redetermination of the estate tax deficiency ordered by the tax court in the original proceeding against the estate. It also elleged that Baptiste might, upon review of the records, amend his petition to challenge the existence of any transferee liability on his part. Following the government's objection, the tax court denied Baptiste's motion.

On April 9, 1992, the tax court entered an order granting partial summary judgment to the government on the liability of Baptiste for the estate tax deficiency up to $50,000. The court specifically found that Baptiste was a transferee as a matter of law, that as a transferee he was liable for the estate's unpaid deficiency, and that the amount of the deficiency, decided in the earlier case against the estate, was res judicata and could not be relitigated by Baptiste. The court reserved the question of Baptiste's potential liability for interest in excess of the value of the property he received from the estate, $50,000. After briefing by the parties on the interest issue, the court, on April 30, 1993, entered an order holding Baptiste personally liable for interest on his underlying $50,000 obligation, thus raising his total obligation above the value of the property he received from the estate. It is from these two orders that Baptiste appeals.

II. DISCUSSION

We review the grant of summary judgment *de novo,* reviewing the facts and applying the same legal standards as the tax court. *Thrasher v. State Farm Fire & Casualty Co.,* 734 F.2d 637, 638 (11th Cir.1984) (per curiam). Under Rule 121(b), summary judgment is appropriate if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that "there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Tax Ct.R. 121(b); *see also Zaentz v. Commissioner,* 90 T.C. 753, 754, 1988 WL 34876 (1988). The moving party has the burden of showing that no genuine issue exists as to any material fact and that he is entitled to judgment on the substantive issues as a matter of law. *Espinoza v. Commissioner,* 78 T.C. 412, 416, 1982 WL 11163 (1982). In deciding whether to grant summary judgment, the court views the facts and inferences drawn therefrom in the light most favorable to the non-moving party. *Naftel v. Commissioner,* 85 T.C. 527, 529, 1985 WL 15396 (1985).

In addition to the pleadings and other materials, the tax court, in granting summary judgment to the government, relied on facts deemed admitted by the court's grant of the government's Rule 37(c) motion. Facts deemed admitted pursuant to Rule 37(c) are considered conclusively established and may be relied upon by the government even in relation to issues where the government bears the burden of proof. *Smith v. Commissioner,* 926 F.2d 1470, 1476 n. 11 (6th Cir.1991); *Marshall v. Commissioner,* 85 T.C. 267, 272-73, 1985 WL 15379 (1985); *Doncaster v. Commissioner,* 77 T.C. 334, 336-38, 1981 WL 11223 (1981).

Baptiste argues that, since he was *pro se* at the time he failed to answer the affirmative allegations of the govern-

ment, he should not be bound by the conclusive establishment of these facts under Rule 37(c). This argument is without merit. Following the government's Rule 37(c) motion, the court specifically granted Baptiste an additional month in which to reply to the government's allegations before the court would deem these allegations admitted. Despite the court's leniency to a *pro se* petitioner, Baptiste failed to respond. There was no abuse of discretion in granting the Rule 37(c) motion, and we accept these facts as admitted and conclusively established for purposes of our review.[3]

A. *Transferee Liability As A Matter Of Law*

The first issue presented is whether the tax court was correct in holding that, as a matter of law, Baptiste is a transferee of the estate. Section 6324(a)(2) of the Internal Revenue Code (the "Code") [4] provides:

> If the estate tax imposed by chapter 11 is not paid when due, then the spouse, *transferee,* trustee . . ., or benficiary, *who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042,* inclusive, to the extent of the value, at the time of the decedent's death, of such property, *shall be personally liable* for such tax.

I.R.C. § 6324(a)(2) (emphasis added). Baptiste argues that his status as a transferee should be determined as a matter of state law, and that, therefore, genuine issues of material fact remain as to whether or not he is a transferee liable under this section.

---

[3] The consequence of this result is minor.

[4] Hereinafter, all references to sections are to sections of the Internal Revenue Code, unless otherwise noted.

It is true that cases have held that, in the income tax area, a person's status as a transferee is to be established by reference to state law. *See Commissioner v. Stern,* 357 U.S. 39, 45, 78 S.Ct. 1047, 1051, 2 L.Ed.2d 126 (1958); *Edelson v. Commissioner,* 829 F.2d 828, 833 (9th Cir.1987); *see also Stoumen v. Commissioner,* 261 F.2d 172, 174 (3d Cir.1958). However, the specific basis of these decisions undercuts Baptiste's reliance on them. In the above-cited cases, the rationale for referring to state law to determine one's status as a transferee was the fact that the statute under which the government assessed these putative transferees was purely procedural and did not, of itself, create liability. As the Court observed, "since § 311 is purely a procedural statute we must look to other sources for definition of the substantive liability. *Since no federal statute defines such liability,* we are left with a choice between federal decisional law and state law for its definition." *Stern,* 357 U.S. at 44, 78 S.Ct. at 1050 (emphasis added). This holding of the Supreme Court, on which the other cases rely, is specifically grounded in the absence of a federal statute creating liability.

In this case there is more than a purely procedural statute at issue. The procedural collection statute here, the equivalent to section 311 in *Stern,* is section 6901(a).[5]

---

[5] Section 6901(a) provides, in relevant part:

> (a) **Method of Collection.**—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred.
>
> (1) **Income, estate, and gift taxes.**—
>
> (A) **Transferees.**—The liability, at law or in equity, of a transferee of property—
>
> * * * * *

Unlike *Stern*, however, here there is a federal statute that creates liability. Section 6324(a)(2) imposes transferee liability. Section 6901(h) provides that, as used in section 6901, the term "transferee" specifically includes, "with respect to estate taxes, . . . any person who, *under section 6324(a)(2)*, is personally liable for any part of such tax." I.R.C. § 6901(h) (emphasis added). The italicized portion of this language confirms that section 6324(a)(2) is an independent federal source of liability. Thus, this case is unlike *Stern* in that a federal statute creates liability, so there is no reason to look to state law.

The resolution of whether section 6324(a)(2) imposes liability on Baptiste as a transferee is straightforward. Pursuant to the facts deemed admitted under Rule 37(c), the estate had not, at the time the government assessed Baptiste, paid the estate tax due. Baptiste was the beneficiary of an insurance policy on the decedent's life. The decedent, at the time of his death, possessed incidents of ownership in that policy. Baptiste actually received $50,000 from that policy following the decedent's death. These facts are sufficient to establish, as a matter of law, Baptiste's status as a transferee.

Section 6324(a)(2) defines as a liable transferee one who receives property included in the gross estate under sections 2034 to 2042, inclusive. *See Groetzinger v. Commissioner*, 69 T.C. 309, 316, 1977 WL 3623 (1977). Section 2042(2) provides that the value of the gross estate shall include the value of all property, including proceeds of insurance on the decedent's life if the decedent possessed,

---

(ii) of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), . . .

* * * * *

in respect of the tax imposed by subtitle A or B.

I.R.C. § 6901(a).

at the date of his death, incidents of ownership in the policy. I.R.C. § 2042(2). Under that section the value of the insurance policy of which Baptiste was the beneficiary was included in the gross estate. Baptiste, therefore, is a transferee as one who "receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042." I.R.C. § 6324(a)(2). The tax court was correct in holding that Baptiste is a transferee within the meaning of sections 6324(a)(2) and 6901(a) as a matter of law.

B. ***Application Of Res Judicata To Determination Of The Estate Tax Liability Of The Decedent's Estate***

Baptiste also challenges the tax court's application of the doctrine of res judicata to the prior determination by the tax court of the deficiency in estate tax owed by the decedent's estate in determining the amount of personal liability imposed on Baptiste pursuant to section 6324(a)(2). The government maintains that the doctrine of res judicata applies to this determination and that Baptiste may not revisit the issue of the total estate tax deficiency.

The doctrine of res judicata is one of finality, providing that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights and responsibilities of the parties and their privies. As to the parties to the prior proceeding and their privies, res judicata constitutes an absolute bar to a subsequent judicial proceeding involving the same cause of action. *Federated Dep't Stores, Inc. v. Moitie,* 452 U.S. 394, 398, 101 S.Ct. 2424, 2428, 69 L.Ed.2d 103 (1981); *Commissioner v. Sunnen,* 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948). It is well settled that the doctrine of res judicata is applicable in tax cases. *United States v. International Bldg. Co.,* 345 U.S. 502, 506, 73 S.Ct. 807, 809, 97 L.Ed. 1182 (1953); *Sunnen,* 333 U.S. at 598, 68 S.Ct. at 719.

The application of res judicata requires that: (1) the issue contested in both proceedings be identical; (2) the parties to the subsequent proceeding are the same as, or are in privity with, the parties to the earlier proceeding; and (3) the earlier proceeding resulted in a final judgment on the merits. *Nevada v. United States,* 463 U.S. 110, 129-130, 103 S.Ct. 2906, 2918, 77 L.Ed.2d 509 (1983).

The issue in the earlier tax court case was the estate tax deficiency owed by the estate of the decedent to the government. Here, Baptiste is attempting to relitigate the issue of the total deficiency of the estate, on the grounds that certain valuations were incorrect and that currency rate fluctuations have changed the estate's gross value; all in order to decrease his personal liability under section 6324(a)(2). The fact that his purpose is to decrease his personal liability, rather than in the interest of the estate, is of no moment. The estate's liability under section 2002 and Baptiste's liability under section 6324(a)(2) both embrace the same determination—the amount of estate tax imposed by chapter 11. The issues are the same.

Baptiste contends that he should not be bound by the earlier decision of the tax court because he was not a party to that proceeding. While this is true, it is well settled that a transferee is in privity with his transferor for purposes of the Internal Revenue Code. *Estate of King v. Commissioner,* 61 T.C.M. (CCH) 2334, 2335, 1991 WL 44254 (1991) (privity between estate and estate's transferee for estate tax purposes); *Krueger v. Commissioner,* 48 T.C. 824, 829-30, 1967 WL 990 (1967) (privity between estate and transferee for income tax purposes). There is no doubt that Baptiste is in privity with the estate of the decedent.

The earlier proceeding, in which the tax court entered a stipulated order determining the estate tax deficiency of the estate, was a final judgment on the merits. This is true despite the fact that the judgment was entered based on

an agreement between the parties rather than as the result of a trial on the merits. The Court has ruled that a final decision of the tax court determining the tax liability of a taxpayer is a judgment on the merits for the purposes of res judicata, "whether or not the basis of the agreements on which [it] rest[s] reached the merits." *International Bldg.*, 345 U.S. at 506, 73 S.Ct. at 809. This has been reasserted in numerous tax cases. "This [c]ourt has specifically held, on facts very similar to those of the instant case, that a decision entered pursuant to a stipulated agreement reached by an estate and [the government] is binding, and a transferee of such an estate may not have the estate's tax liabilities reconsidered on the merits." *Forehand v. Commissioner,* 66 T.C.M. (CCH) 1763, 1764, 1993 WL 533995 (1993). The rule that "a transferee is privy to a transferor and precluded from reopening a decision establishing the tax liability of his transferor . . . should apply when the decision is based upon an agreement of the parties." *Krueger,* 48 T.C. at 830. "The principles of res judicata have been applied with equal force by this [c]ourt to stipulated decisions in the transferee liability context." *Estate of King,* 61 T.C.M. (CCH) at 2336. Thus, the earlier decision of the tax court, establishing the estate tax liability of the estate, is a final decision the merits notwithstanding its stipulated nature.

Alternatively, Baptiste argues that, even if the doctrine of res judicata is otherwise applicable, principles of public policy and fundamental fairness preclude its application here. Specifically, Baptiste contends that the estate tax liability was miscalculated, that the bulk of the estate's assets are located in Venezuela and are controlled by the decedent's widow, who refuses to pay any portion of the deficiency, and that the government is pursuing a United States citizen while allowing a nonresident alien to avoid liability. Hence, he argues that the tax court should have

allowed him to relitigate the issue of the estate tax deficiency. We disagree.

Obviously, Baptiste cannot correct any injustice occasioned by the decedent's widow's refusal to pay any portion of the estate tax from the substantial assets she holds in Venezuela by relitigating the estate's tax liability. Moreover, there is no public policy or fundamental fairness issue asserted by Baptiste which would override the purpose of the doctrine of res judicata. The Court has instructed: "The doctrine of res judicata serves vital public interests beyond any individual judge's ad hoc determination of the equities in a particular case. There is simply 'no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of *res judicata.*' " *Federated Dep't Stores,* 452 U.S. at 401, 101 S.Ct. at 2429 (quoting *Heiser v. Woodruff,* 327 U.S. 726, 733, 66 S.Ct. 853, 856, 90 L.Ed. 970 (1946)). And further, "[w]e have stressed that '[the] doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, "of public policy and of private peace," which should be cordially regarded and enforced by the courts. . . .' " *Id.* (quoting *Hart Steel Co. v. Railroad Supply Co.,* 244 U.S. 294, 299, 37 S.Ct. 506, 508, 61 L.Ed. 1148 (1917) (alterations in original)).

Baptiste also appears to ground his public policy and fundamental fairness arguments on errors in calculating the deficiency and on the fact that Venezuelan currency devaluation has significantly decreased the value of the assets of the estate in terms of United States dollars. However, the Court has cautioned: "Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Id.* at 398, 101 S.Ct. at 2428. No

public policy or fundamental fairness argument by Baptiste overrides the otherwise applicable doctrine of res judicata.

We are satisfied that the three elements of res judicata are met here. The issue Baptiste proposes to litigate in the tax court is identical to that already determined by that court—the estate tax deficiency of the decedent's estate. Baptiste, as a transferee of the estate under section 6324(a)(2), is in privity with the estate, and as such is treated as a party to the prior action. Thus, the tax court's final determination of the estate tax deficiency on the decedent's estate, despite the fact that it was based upon a stipulated agreement between the parties as opposed to an adversarial proceeding, is a final judgment on the merits for purposes of res judicata. The requirements of res judicata having been met, we hold that the tax court was correct in using that doctrine to bind Baptiste to its prior decision establishing the estate tax deficiency on the decedent's estate.

C. *Personal Liability For Interest*

Having determined that Baptiste is liable under section 6324(a)(2) for the unpaid estate tax, in an amount determined by the prior decision of the tax court, we must decide whether Baptiste is personally liable for interest on the obligation imposed under section 6324(a)(2), and if so, whether the limitation of liability contained in that section applies to such an interest obligation. For the following reasons, we hold that section 6324(a)(2) imposes an independent liability on Baptiste, that such liability arose on the due date of the estate tax return when the estate failed to pay the amount due, that section 6601 applies to impose interest on that obligation from the day the liability arose, and that the liability limitation of section 6324(a)(2) ap-

plies only to the underlying obligation and not to any such interest. Thus, Baptiste is liable for interest running from the day the estate tax return was due until he satisfies the obligation, and such interest is not limited by the $50,000 he received from the life insurance policy.

Section 6324(a)(2) imposes liability on a transferee for the unpaid estate taxes of a transferor estate, limited to the value of the property the transferee received from the estate. Section 6601(e)(1) states: "Any reference in this title . . . to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax." I.R.C. § 6601(e)(1). Thus, section 6324(a)(2), by imposing on the transferee the obligation to pay unpaid "estate tax," also makes the transferee liable for any interest accrued on the underlying estate tax. However, section 6324(a)(2) limits the liability of the transferee to an amount equivalent to the value of the assets he received from the transferor estate. Since the term "estate tax" in section 6324(a)(2) includes interest accrued on the underlying obligation, the transferee's liability for that interest is also constrained by this limitation.

The more difficult issue, however, is whether section 6601 imposes interest on the transferee's independent liability for the tax, and if so, whether that interest obligation is constrained by the limitation contained in section 6324(a)(2). The key to this question lies in understanding the nature of the obligation imposed by section 6324(a)(2). Section 6324(a)(2) provides that a transferee, under certain circumstances, "shall be personally liable for such [unpaid estate] tax." The question is whether this is a tax liability as opposed to a personal liability of the general sort imposed by federal law. We opine that it is the latter.

The language of section 6324(a)(2) does not provide that the liability of a transferee is a tax liability. Rather, it imposes an obligation on the transferee to satisfy the under-

lying tax liability of the transferor estate. Because the estate's obligation is one in the nature of a tax does not mean the transferee also has a tax liability. Statutory construction supports the conclusion that the obligation imposed by section 6324(a)(2) is a nontax liability. If the transferee's obligation were a tax liability, the government could collect it and impose penalties and interest on it under existing provisions of the Code without requiring any additional authority. As it is, however, section 6901(a) provides a procedure through which the government may collect certain liabilities, including transferee liabilities, in much the same way it collects tax liabilities.[6]

Were transferee liability under section 6324(a)(2) a tax liability, there would be no need for the authorizations and provisions of section 6901(a). In fact, that section would be superfluous and wholly unnecessary, a statutory construction that is both disfavored and unlikely. Accordingly, any liability to which section 6901(a) applies is not a tax liability, but rather an independent liability. Other provisions of the tax code do not automatically apply to such obligations. The term "transferee" is specifically defined in section 6901(h) to include, for the purposes of section 6901(a), "any person who, under section 6324(a)(2), is personally liable" for unpaid estate tax. I.R.C. § 6901(h). Baptiste's liability under section 6324(a)(2), therefore, is not a tax liability, but is an independent personal obligation which, pursuant to section 6901(a), may be collected in a manner similar to that employed in collecting tax liabilities.

The next step in our analysis is to decide whether any provision imposes interest on the section 6324(a)(2) obligation, and whether any interest liability is subject to the "value of the assets" limitation contained in section

---

[6] For the relevant portion of section 6901(a), see *supra* note 4.

6324(a)(2). In addition to allowing the government to enforce a section 6324(a)(2) liability in much the same way as it enforces a tax liability, section 6901(a) also provides that a liability arising under section 6324(a) shall be "subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred." I.R.C. § 6901(a). Thus, section 6901(a) authorizes the government to impose interest on the obligation of the transferee under section 6601 as if it were a tax liability.[7] This conclusion is further bolstered by common sense, as it is unlikely that Congress would alter the traditional rule that one who possesses funds of the government must pay interest for the period that person enjoys the benefit of same.

Having determined that Baptiste's liability under section 6324(a)(2) is subject to the interest provision of section 6601, we must next determine the period during which that interest accrues and how its accumulation affects the underlying obligation of the estate for the estate tax.

---

[7] In his concurring opinion, the reasoning of which we have followed closely, tax court Judge James S. Halpern engages in a lengthy analysis of the legislative history of section 6901 and concludes that it was intended to authorize the government to impose interest on obligations subject to section 6901. *See Baptiste v. Commissioner*, 100 T.C. No. 16, 1993 WL 89210 (1993) (Halpern, J. concurring). We do not repeat that analysis here. Rather, to summarize, section 311, the predecessor to section 6901, specifically included, in a parenthetical, interest as one of the provisions the government could apply. In enacting section 6901, Congress removed the parenthetical, but gave no indication that in doing so it intended to make the interest provisions of the Code inapplicable to section 6901 liabilities. Rather, it appears that Congress was removing superfluous language, as the phrase "the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred" manifestly includes the interest term of section 6601, which is a provision applicable to the underlying estate tax.

Section 6601(a) provides: "If any amount of tax imposed by this title . . . is not paid on or before the last date prescribed for payment, interest on such amount . . . shall be paid for the period from such last date to the date paid." I.R.C. § 6601(a). The last date prescribed for payment is not specifically identified in section 6601. Therefore, section 6601(b)(5) applies, providing: "[I]n all . . . cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises. . . ." I.R.C. § 6601(b)(5). Baptiste's liability for the estate's unpaid deficiency arose, under section 6324(a)(2), when the tax was not paid by the estate *and* Baptiste was in possession of the transferred assets.[8] In this case, the estate tax return was due and unpaid by the estate after Baptiste received the $50,000 in proceeds from the life insurance policy. As a result, Baptiste's liability arose on the day the estate tax return was due, and Baptiste is liable for interest on his $50,000 obligation from that date forward. The "value of the assets" limitation contained in section 6324(a)(2) applies only to the underlying tax obligation imposed on Baptiste's liability under section 6324(a)(2) by way of sections 6901(a) and 6601(a).[9]

---

[8] Section 6324(a)(2) imposes a personal liability for unpaid estate tax on a transferee who "receives" property included in the decedent's gross estate under sections 2034 through 2042. A transferee's personal liability cannot arise until the estate has failed to pay the estate taxes due *and* the transferee has received the property. Consequently, a transferee's liability arises on the later of the due date of the transferor's estate tax return or the date property included in the gross estate was received by the transferee.

[9] This result comports with economic reality. The limitation of section 6324(a)(2) was designed to prevent a transferee from being liable for the estate taxes of another beyond the benefit he received from the estate. In the case of the disputed interest, however, Baptiste has had

III. CONCLUSION

Baptiste raises three challenges to the tax court's grant of summary judgment to the government. First, he asserts that it erred in determining that he was a transferee under the Code as a matter of law. Second, he challenges the tax court's application of res judicata to the issue of the amount of the deficiency in estate tax determined in a prior case. Finally, he argues that the limitation in section 6324(a)(2), which allows a transferee to be held liable for unpaid estate tax only up to the amount of the assets he receives from the gross estate, applies to any interest on his obligation. We disagree and hold that the tax court was correct in its result on all three issues. We decide the interest issue, however, for reasons different than those expressed by the majority of the tax court.

AFFIRMED.

---

the use and enjoyment of the $50,000 from the time he received it until the present. There is no unfairness in requiring him to pay for this use, and the denial of its use to the government. Baptiste has had the opportunity to invest and earn a return on the $50,000 similar to that which he is now obligated to pay the government, and the government has been refused that opportunity. To hold otherwise would create a system which encourages transferees to retain assets of the estate, at the expense of the government, for as long as possible with no adverse consequences.

U.S. GOVERNMENT PRINTING OFFICE: 1994—301-157/86218